

D-1

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 13, Department of Environmental Quality - Solid Waste Management

Amend: R18-13-201, R18-13-703, R18-13-1301, R18-13-1302, R18-13-1303,
R18-13-1304, R18-13-1601, R18-13-1602, R18-13-1603, R18-13-1604,
R18-13-1607, R18-13-1608, R18-13-1610, R18-13-1613



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 7, 2020

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R21-0104)
Title 18, Chapter 13, Articles 2, 7, 13, and 16, Department of Environmental Quality - Solid Waste Management

Amend: R18-13-201, R18-13-703, R18-13-1301, R18-13-1302, R18-13-1303, R18-13-1304, R18-13-1601, R18-13-1602, R18-13-1603, R18-13-1604, R18-13-1607, R18-13-1608, R18-13-1610, R18-13-1613

Summary:

This Notice of Final Expedited Rulemaking (expedited rulemaking) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 13, Articles 2, 7, 13, and 16, regarding Solid Waste Management. In this expedited rulemaking, the Department seeks to update these rules, which have not been updated in the past 20 years. Specifically, the expedited rulemaking will correct citations, update outdated language, and make other technical changes to the rules. In addition, the Department seeks to update the definition of "petroleum contaminated soil" or PCS, as it describes in Item 6 of its Preamble. These changes also implement a course of action in the Department's recent Five Year Review Report (5YRR) for these rules, which the Council approved on March 3, 2020.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The Department states that this expedited rulemaking will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the Department states that this expedited rulemaking will correct outdated citations and clarify the language of a rule without changing the effect of the rule pursuant to A.R.S. § 41-1027(A)(3). In addition, it will implement, without material change, courses of action proposed in a five-year review report that the Governor's Regulatory Review Council approved on March 3, 2020, pursuant to A.R.S. § 41-1027(A)(7).

Upon review of the expedited rulemaking and supporting documents, Council staff agrees that this rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) and (7).

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

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

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

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

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

The Department did not receive any comments in conducting this expedited rulemaking.

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

No. The Department made one technical change to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking, as described in Item 10 of the Preamble. This change does not result in a rule that is "substantially different" under A.R.S. § 41-1025.

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

No. There are no corresponding federal laws to the rules subject to this expedited rulemaking.

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

Two rules in this expedited rulemaking require a permit: R18-13-1607 (Facility Approval; Application) and R18-13-1610 (Temporary Treatment Facility). The Department states that A.R.S. § 41-1037 does not apply to these two rules because the facilities are not substantially similar in nature, citing A.R.S. § 49-706(A)(1)(b). The Department further notes that the legislature specifically authorized an alternative type of license for these facilities in A.R.S. §§ 49-762(A)(4) and 49-858, which makes a general permit not applicable under A.R.S. § 41-1037(A)(2).

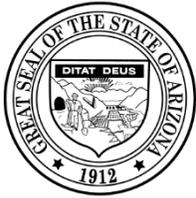
Upon review of the applicable statutes, Council staff agrees with the Department's determination that a general permit is not applicable for these two rules pursuant to A.R.S. § 41-1037(A)(2) (“[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute”).

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

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

9. **Conclusion**

In this expedited rulemaking, the Department seeks to update certain rules relating to solid waste management and implement a course of action proposed in its recent 5YRR for these rules. The Department properly cites the bases under A.R.S. § 41-1027(A) to conduct this expedited rulemaking. If approved, this expedited rulemaking would be immediately effective upon the Department filing its Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

December 9, 2020

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: 18 A.A.C. 13, Department of Environmental Quality-Solid Waste Management

Dear Ms. Sornsins:

Today I am sending you a final expedited rule package and request that you place it on the Council agenda for approval. Pursuant to A.A.C. R1-6-201, I provide the following information:

- The close of record date was November 12, 2020.
- This rulemaking is related to a five-year-review report, approved on March 3, 2020. The rulemaking implements a course of action proposed in the above-mentioned five-year review report, as required by A.R.S. 41-1027(A)(7).
- This rulemaking meets the requirements of an expedited rulemaking under A.R.S. 41-1027(A)(3), as it will correct typographical errors, correct outdated citations, clarify language to decrease the regulatory burden, and fix other similar clerical issues.
- The rule does not include any new or increased fees.

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule. No new full-time employees are necessary to implement and enforce the rule, and no competitiveness analysis was submitted. Electronic copies of have been provided of the following:

- The Notice of Final Expedited Rulemaking.
- Comments received (none).
- The general and specific statutes authorizing the rule.
- Definitions of terms used in the rulemaking that are contained in statutes or other rules.
- The existing rule, for the subsections listed as "no change".

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Nicole Sornsin, Chair
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The Notice of Rulemaking Docket Opening and Notice of Proposed Expedited Rulemaking were filed with the Secretary of State, and published in the Arizona Administrative Register on September 18, 2020, and October 23, 2020, respectively.

Please do not hesitate to contact me, or Caitlin Caputo, Legal Analyst, at 602-771-4677, if there are any questions that we can answer for you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Misael Cabrera', with a stylized flourish at the end.

Misael Cabrera, P.E.
Director

Electronic Enclosures:
Notice of Final Expedited Rulemaking
Comments received (none)
Copy of definitions used in rules
Authorizing statutes
Existing rules

**NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY**

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

PREAMBLE

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

R18-13-201	Amend
R18-13-703	Amend
R18-13-1301	Amend
R18-13-1302	Amend
R18-13-1303	Amend
R18-13-1304	Amend
R18-13-1601	Amend
R18-13-1602	Amend
R18-13-1603	Amend
R18-13-1604	Amend
R18-13-1607	Amend
R18-13-1608	Amend
R18-13-1610	Amend
R18-13-1613	Amend

- 2. Citations to the agency’s statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)
Implementing statutes: A.R.S. §§ 49-701.01(C), 49-762, 49-762.03(F), 49-857(C), and 49-851 through 49-868

- 3. The effective date of the rules:**

(Date filed with the Secretary of State)

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 1947, September 18, 2020
Notice of Proposed Expedited Rulemaking: 26 A.A.R. 2759, October 23, 2020

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

Name:	Caitlin Caputo or Mark Lewandowski
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-4677 or (602) 771-2230
Fax:	(602) 771-4272
E-mail:	caputo.caitlin@azdeq.gov or lewandowski.mark@azdeq.gov

- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the expedited rulemaking:**

As required by A.R.S. § 41-1027(A), these changes do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Further, the changes correct outdated citations and clarify the language of a rule without changing the effect of the rule, as required under A.R.S. § 41-1027(A)(3), and implement, without material change, courses of action proposed in a five-year review report approved by the Governor’s Regulatory Review Council on March 3, 2020, as required under A.R.S. § 41-1027(A)(7).

The definition of Petroleum Contaminated Soil (PCS) is provided in A.R.S. § 49-851(A)(3) and has been unchanged since 1996. The previous definition in Rule 1601, subsections (8) and (13), of PCS predated the 1996 statute, so ADEQ used A.R.S. § 49-851(A)(3) as a framework for the updated definition of PCS in this rulemaking, but did not include a level for the chemical acenaphthylene since ADEQ never determined a level for that chemical in its SRL rules. The result is unification of the rule and statutory definitions of PCS.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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:

The Department of Environmental Quality did not review or rely on any study for this rulemaking.

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

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

Not applicable, in accordance with A.R.S. § 41-1055(D)(2).

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

ADEQ determined that the following change needed to be added to R18-13-201: "A. This Section applies only to biosolids as defined in R18-13-1501(7) R18-9-1001."

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

ADEQ did not receive public or stakeholder comments or objections about the expedited rulemaking.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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:

Two of the rules amended in this rulemaking require a permit: R18-13-1607 and R18-13-1610. A.R.S. § 41-1037 does not apply to these permits (special waste treatment, storage or disposal facility plan approvals) because the facilities are not substantially similar in nature. See also A.R.S. § 49-706(A)(1)(b). This conclusion is supported by the fact that the legislature specifically authorized an alternative type of license for these facilities in A.R.S. §§ 49-762(A)(4) and 49-858, which makes a general permit not applicable under A.R.S. § 41-1037(A)(2).

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 corresponding to the rules in Articles 2, 7, 13, and 16. R18-13-1607(A) uses the word "only" and appears to prohibit disposal at a facility out of state, therefore subsection (A) should be clarified to avoid inadvertent prohibition on out of state activities.

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 such analysis was submitted.

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

None.

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

The rules were not previously made as emergency rules.

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

ARTICLE 1. RESERVED

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Section

R18-13-201. Land Application of Biosolids Exemption

**ARTICLE 7. SOLID WASTE FACILITY PLAN
REVIEW FEES**

Section

R18-13-703. Review of Bill

ARTICLE 13. SPECIAL WASTE

Section

R18-13-1301. Definitions

R18-13-1302. Special Waste Generator Manifesting Requirements

R18-13-1303. Special Waste Shipper Manifesting Requirements

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Section

R18-13-1601. Definitions

R18-13-1602. Applicability

R18-13-1603. Exemptions

R18-13-1604. Waste Determination

R18-13-1607. Facility Approval; Application

R18-13-1608. General Design and Performance Standards

R18-13-1610. Temporary Treatment Facility

R18-13-1613. Disposal

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

R18-13-201. Land Application of Biosolids Exemption

- A. This Section applies only to biosolids as defined in ~~R18-13-1501(7)~~ R18-9-1001. The land application of biosolids, when placed on or applied to the land in full conformity with ~~18 A.A.C. 13, Article 15~~ 18 A.A.C. 9, Article 10 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.
- B. No change

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-703. Review of Bill

- A. No change
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § ~~49-769~~ §§ 41-1092 through 1092.12.

ARTICLE 13. SPECIAL WASTE

R18-13-1301. Definitions

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. "Special waste manifest" means a form provided by the Department, shown as ~~Exhibit A~~ Appendix B to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. No change
14. No change

R18-13-1302. Special Waste Generator Manifesting Requirements

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as ~~Exhibit B~~ Appendix A to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.
- B. No change
1. No change
 2. No change
 3. No change
 4. No change
- C. No change
- D. No change
- E. No change
1. No change
 2. No change
- F. No change
- G. No change

R18-13-1303. Special Waste Shipper Manifesting Requirements

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as ~~Exhibit B~~ Appendix A to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
 - 1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of ~~R18-8-302~~ R18-13-1302.
 - 2. No change
 - a. No change
 - b. No change
- C. No change

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as ~~Exhibit B~~ Appendix A to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1601. Definitions

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. “Non-regulated soils” means soils ~~contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 400 mg/kg which~~ that are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- 8. “PCS” means ~~petroleum-contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:~~
 - a. ~~TPH which exceeds concentrations of 5,000 mg/kg,~~
 - b. ~~Benzene which exceeds concentrations of 0.13 mg/kg,~~
 - e. ~~Toluene which exceeds concentrations of 200 mg/kg,~~
 - d. ~~Ethylbenzene which exceeds concentrations of 68 mg/kg,~~
 - e. ~~Total xylene which exceeds concentrations of 44 mg/kg.~~
- 8. “PCS” or “petroleum-contaminated soils” means soils excavated for storage, treatment or disposal containing one or more of the contaminants in the list below at the following concentrations:
 - a. Benzene greater than or equal to 1.4 mg/kg,
 - b. Toluene greater than or equal to 650 mg/kg,
 - c. Ethylbenzene greater than or equal to 400 mg/kg,
 - d. Total Xylenes greater than or equal to 420 mg/kg,
 - e. Anthracene greater than or equal to 240,000 mg/kg,
 - f. Benz(A)anthracene greater than or equal to 21 mg/kg,
 - g. Benzo(A)pyrene greater than or equal to 2.1 mg/kg,
 - h. Benzo(B)fluoranthene greater than or equal to 21 mg/kg,
 - i. Benzo(K)fluoranthene greater than or equal to 210 mg/kg,
 - j. Chrysene greater than or equal to 2,000 mg/kg,

- k. Dibenz(A,H)anthracene greater than or equal to 2.1 mg/kg;
 - l. Fluoranthene greater than or equal to 22,000 mg/kg;
 - m. Fluorene greater than or equal to 26,000 mg/kg;
 - n. Indenopyrene greater than or equal to 21 mg/kg;
 - o. Naphthalene greater than or equal to 190 mg/kg;
 - p. Pyrene greater than or equal to 29,000 mg/kg;
9. No change
10. No change
11. No change
12. No change
13. “Solid waste PCS” means excavated soils contaminated with petroleum, ~~which that~~ are not hazardous waste and ~~which meet any of the following~~ not PCS but that contain one or more of the contaminants in the list below at the following concentrations:
- a. ~~Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;~~ Benzene greater than or equal to 0.65 but less than 1.4 mg/kg;
 - b. ~~Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg;~~ Toluene greater than or equal to 650 mg/kg;
 - c. Ethylbenzene greater than or equal to 400 mg/kg;
 - d. Total Xylenes greater than or equal to 270 but less than 420 mg/kg;
 - e. Anthracene greater than or equal to 22,000 but less than 240,000 mg/kg;
 - f. Benz(A)anthracene greater than or equal to 6.9 but less than 21 mg/kg;
 - g. Benzo(A)pyrene greater than or equal to 0.69 but less than 2.1 mg/kg;
 - h. Benzo(B)fluoranthene greater than or equal to 6.9 but less than 21 mg/kg;
 - i. Benzo(K)fluoranthene greater than or equal to 69 but less than 210 mg/kg;
 - j. Chrysene greater than or equal to 680 but less than 2,000 mg/kg;
 - k. Dibenz(A,H)anthracene greater than or equal to 0.69 but less than 2.1 mg/kg;
 - l. Fluoranthene greater than or equal to 2,300 but less than 22,000 mg/kg;
 - m. Fluorene greater than or equal to 2,700 but less than 26,000 mg/kg;
 - n. Indenopyrene greater than or equal to 6.9 but less than 21 mg/kg;
 - o. Naphthalene greater than or equal to 56 but less than 190 mg/kg;
 - p. Pyrene greater than or equal to 2,300 but less than 29,000 mg/kg;
14. No change
15. No change
16. “Temporary treatment facility” means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce ~~TPH, benzene, toluene, ethylbenzene, or total xylene concentrations~~ the contaminants that make it PCS and which complies with the requirements of R18-13-1610.
17. ~~“Total petroleum hydrocarbons” or “TPH” means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.~~
- ~~17.~~ 17. “Treatability study” means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
- ~~18.~~ 18. “Treatment facility” means a special waste receiving facility at which PCS is treated to reduce the PCS contaminants and, if in the state of Arizona, has been Department-approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, ~~and at which PCS receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.~~

R18-13-1602. Applicability

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change

- 5. No change
- 6. No change
- 7. No change
- C. No change
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
 - 1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
 - 2. Maintains records in accordance with R18-13-1614,
 - 3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
 - 4. ~~Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).~~
- E. Requirements in this Article for Department-approved facilities do not apply to facilities that are out of state or in Indian Country.

R18-13-1603. Exemptions

- A. No change
- B. No change
- C. No change
- D. No change
- E. ~~Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:~~
 - 1. ~~The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.~~
 - 2. ~~The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.~~

R18-13-1604. Waste Determination

- A. No change
 - 1. No change
 - 2. No change
- B. No change
 - 1. No change
 - 2. No change
- C. ~~Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.~~
- D. ~~C.~~ If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:
 - 1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.
 - 2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
 - 3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

R18-13-1607. Facility Approval; Application

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility located in Arizona shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - 3. No change
 - 4. 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
- 5. No change
- 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- 7. No change
- D. No change
- E. No change
- F. No change

R18-13-1608. General Design and Performance Standards

- A. No change
 - 1. No change
 - 2. No change
- B. A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
 - 1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
 - a. Maintain a maximum ~~hydraulic conductivity~~ permeability coefficient of no more than 1×10^{-7} cm/sec;
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D. No change
- E. No change

R18-13-1610. Temporary Treatment Facility

- A. No change
- B. A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
 - 1. No change;
 - 2. No change;
 - 3. Application information required pursuant to A.R.S. § ~~49-762~~ 49-762.03(C) for plan approval for temporary treatment facilities;
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - a. No change
 - b. No change
 - c. No change

- d. No change
- 9. No change
 - a. No change
 - b. No change
- C. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. No change
- D. No change
- E. No change
- F. In accordance with A.R.S. ~~§ 49-762(F)~~ §§ 49-762.03(C), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. ~~§ 49-762(E)~~ § 49-762.04(A).

R18-13-1613. Disposal

- A. No change
- B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
 - 1. No change
 - 2. For purposes of this Section, “composite liner” means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a ~~hydraulic conductivity~~ permeability coefficient of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.



Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

TITLE 18. Environmental Quality

Chapter 13. Department of Environmental Quality - Solid Waste Management

Sections, Parts, Exhibits, Tables or Appendices modified
R18-13-2501

REMOVE Supp. 16-3
Pages: 1 - 41

REPLACE with Supp. 17-4
Pages: 1 - 41

The Council can answer questions about EXPIRED rules in this Chapter:

Name: Governor's Regulatory Review Council
Address: 100 N 15th Ave #305
Phoenix, AZ 85007
Phone: (602) 542-2058

Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Administrative Rules Division

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
December 31, 2017

RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

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

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

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

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.

ARTICLE 1. RESERVED

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Article 2, consisting of Section R18-13-201, adopted effective July 27, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 98-3).

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ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

Title 18, Chapter 13, Article 3, consisting of Sections R18-13-301 through R18-13-312, recodified from Title 18, Chapter 8, Article 5, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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Article 21, consisting of Sections R18-13-2101 through R18-

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13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

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Article 25, consisting of Section R18-13-2501, expired at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

Article 25, consisting of Section R18-13-2501, adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).

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ARTICLE 26. EXPIRED

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4).

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ARTICLE 27. EXPIRED

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

Section

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ARTICLE 1. RESERVED

Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). 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 the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).

R18-13-201. Land Application of Biosolids Exemption

- A. This Section applies only to biosolids as defined in R18-13-1501(7). The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 13, Article 15 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.
- B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

Historical Note

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES**R18-13-301. Reserved****R18-13-302. Definitions**

- A. "Approved" means acceptable to the Department.
- B. "Ashes" means residue from the burning of any combustible material.
- C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

- D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.
- E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.
- F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.
- G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.
- H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Historical Note

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-303. Responsibility

- A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.
- B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.
- C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.
- D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

Historical Note

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-304. Inspection

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

Historical Note

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-305. Collection Required

- A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.
- B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection

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agency where special facilities or equipment required for the collection and disposal of such wastes are provided:

1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
2. Materials resulting from the repair, excavation, or construction of buildings and structures.
3. Solid wastes resulting from industrial processes.
4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
5. Manure.

Historical Note

Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-306. Notices

- A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:
 1. Definitions.
 2. Places to be served.
 3. Places not to be served.
 4. Scheduled day or days of collection.
 5. Materials acceptable for collection.
 6. Materials not acceptable for collection.
 7. Preparation of refuse for collection.
 8. Types and size of containers permitted.
 9. Points from which collections will be made.
 10. Necessary safeguards for collectors.
- B. All such notices governing storage and collection shall conform to these rules.

Historical Note

Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-307. Storage

- A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.
- B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.
- C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B) above.
- D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.
- E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance.

sance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

Historical Note

Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-308. Frequency of Collection

- A. The frequency of collection shall be in accordance with rules of the collection agency but not less than that shown in the following schedules:
 1. Garbage only -- twice weekly.
 2. Refuse with garbage -- twice weekly.
 3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.
- B. A variance from the required frequency rate may be granted to allow for the collection of garbage once weekly. The variance may be granted by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.

Historical Note

Section recodified from A.A.C. R18-8-508, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-309. Place of Collection

- A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.
- B. Where alleys are provided, collection shall be made on the alley side of the premises.

Historical Note

Section recodified from A.A.C. R18-8-509, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-310. Vehicles

- A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.
- B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.
- C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-510, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-311. Disposal; General

- A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.

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- B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.
- C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.
- D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-511, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-312. Methods of Disposal

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
 - a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
 - b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
 - c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
 - d. Burning of refuse is prohibited.
 - e. An all weather access road is required.
 - f. Suitable equipment and operating personnel shall be provided.
 - g. Salvaging, if permitted, shall be rigidly controlled.
 - h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.
2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided.
 - a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
 - b. Noncombustible refuse shall be disposed of by methods approved by the Department.

- c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
 - a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
 - b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
 - c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
 - a. The garbage is collected and stored in suitable containers.
 - b. Only approved type vehicles are used for collection.
 - c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
 - d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. RESERVED**ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION****R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees**

- A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012, and annually thereafter by September 30th:
 1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
 - a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
 - b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
 2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
 3. A waste tire shredding and processing facility.
- B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit

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the following information to the Department before beginning construction:

1. The name of the solid waste facility.
 2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
 6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
 7. Documentation that the facility has any other environmental permit that is required by statute.
 8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.
- C.** Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
 2. The name, address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
 6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
 7. Documentation that the facility continues to hold any other environmental permit that is required by statute.
- D.** Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.
- E.** Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$250 for each annual registration thereafter.
- F.** As used in this Section:
1. "Department" means the Arizona Department of Environmental Quality.
 2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source sepa-

rated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
 - a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
 - b. A material that is a result of a process or activity whose purpose was to produce something else.
 - c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 6. RESERVED**ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES****R18-13-701. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit" or "APP" means the permit that is required pursuant to A.R.S. § 49-241.
2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:
 - a. Presiding officer services for public hearings on a plan review decision,
 - b. Court reporter services for public hearings on a plan review decision,
 - c. Facility rentals for public hearings on a plan review decision,
 - d. Charges for laboratory analyses performed during the plan review,
 - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

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Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Fee Tables

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	\$20,000	\$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	\$2,000	\$50,000
Other Solid Waste Facilities Subject to Plan Approval	\$10,000	\$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	\$1,500	\$150,000
Solid Waste Landfills - Type IV - RD&D	\$15,000	\$150,000
Solid Waste Landfills - Type III	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	\$500	\$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	\$600 Flat Fee	N/A
Other Solid Waste Facilities	\$200	\$5,000

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:

1. The dates of the billing period;
2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
 - a. Each review task performed,
 - b. The facility and operational unit involved, and
 - c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and

4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

- C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.
- D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.
- E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all review hours spent working on the review of a plan, and add review-related costs which were incurred but are not included in the hourly billing rate.
- F. The hourly rate is \$122.00, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error "facilities" in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-703. Review of Bill

- A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and

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reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-704. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-705. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-706. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees

- A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.
- B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.
- C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.
- D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

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Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	\$750	\$100
Collection, Storage and Transfer-Complex	\$7,500	\$1,000
Treatment-Standard	\$1,000	\$100
Treatment-Complex	\$10,000	\$1,000
Disposal	\$15,000	N/A

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

- A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
 - 1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
 - 2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
 - 3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.
- B. Authorized and prohibited materials.
 - 1. Disposal of the following is allowed under this general permit:
 - a. Solid waste generated at the mining operation where the landfill is located; and
 - b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
 - 2. Disposal of the following is prohibited under this general permit:
 - a. Used oil as defined in A.R.S. § 49-801(3).
 - b. Human excreta as defined in R18-13-1102.
 - c. Special waste as defined in A.R.S. § 49-851(A)(5).
 - d. Biohazardous medical waste as defined in R18-13-1401.
 - e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
 - f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
 - g. Bulk or noncontainerized liquid waste.
 - h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.
- C. A person may operate a landfill at a mining operation under this general permit if:
 - 1. Operation of the landfill complies with the requirements of this Section;
 - 2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
 - 3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and
 - 4. The person submits the applicable fee established in R18-13-801 for the Disposal category.
- D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:

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1. The name, address, and telephone number of the applicant;
 2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
 3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
 4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
 5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
 6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
 - a. One (1) measurement per acre of landfill waste footprint; or
 - b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
 7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
 8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
 9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.
- E.** Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.
- F.** Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
 2. Authority to Operate issuance.
 - a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
 - b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
 3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
 - a. The reason for the denial with reference to the statute or rule on which the denial is based;
 - b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- G.** Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
 2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.
- H.** Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
 2. Direct storm water runoff from surrounding areas away from the landfill.
 3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
 4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
 5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
 6. Methane monitoring.
 - a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
 - i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
 - ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
 - (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
 - (2) A person operating a landfill subject to annual methane monitoring may request

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the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.

- b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
- 7. Maintain an operating record that documents compliance with the conditions in this permit.
- I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
 - 1. Landfill construction drawings and as-built plans, if available;
 - 2. The operating record required by subsection (H)(7); and
 - 3. Methane monitoring results, if any, obtained under subsection (H)(6).
- J. Reporting requirements. A permittee shall report the following to the Department:
 - 1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
 - 2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.
- K. General applicability. Landfills covered under this general permit:
 - 1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
 - 2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).
- L. For the purposes of this Section, “mining” has the definition at A.R.S. § 27-301.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING

R18-13-901. Reserved

R18-13-902. Expired

Historical Note

Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-3).

ARTICLE 10. RESERVED**ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA**

Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1101. Reserved

R18-13-1102. Definitions

- A. “Chemical toilet” means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.

- B. “Department” means the Department of Environmental Quality or a local health department designated by the Department.
- C. “Earth-pit privy” means a device for disposal of human excreta in a pit in the earth.
- D. “Human excreta” means human fecal and urinary discharges and includes any waste that contains this material.
- E. “License” means a stamp, seal, or numbered certificate issued by the Department.
- F. “Pail or can type privy” means a privy equipped with a watertight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.
- G. “Person” means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.
- H. “Sewage” means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

Historical Note

Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1103. General Requirements; License Fees

- A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.
- B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.
- C. License terms.
 - 1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be \$250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a \$75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
 - 2. For those vehicles licensed before July 1, 2012, the initial license fee shall be \$75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of \$75 to the Department no later than 30 days before expiration.
 - 3. Each vehicle license may be renewed if:
 - a. The annual license fee is paid,
 - b. The owner or operator is in compliance with subsection (D),
 - c. The vehicle is operated by the same person for the same purpose, and
 - d. The vehicle is maintained according to this Article.
 - 4. The license is not transferable either from person to person or from vehicle to vehicle.

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5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.
- D.** Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.

Historical Note

Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1104. Repealed**Historical Note**

Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1105. Reserved**R18-13-1106. Inspection**

The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.

Historical Note

Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1107. Reserved**R18-13-1108. Repealed****Historical Note**

Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1109. Reserved**R18-13-1110. Reserved****R18-13-1111. Reserved****R18-13-1112. Sanitary Requirements**

- A.** A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:
1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
 2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
 3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.

4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,
 5. Portable containers are kept fly-tight while being transported to and from the vehicle,
 6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
 7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
 8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
 - a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
 - b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
 - c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.
- B.** Open dumping is prohibited except in designated areas approved by the local county health department.

Historical Note

Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1113. Repealed**Historical Note**

Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1114. Repealed**Historical Note**

Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1115. Repealed**Historical Note**

Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1116. Suspension and Revocation

- A.** If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed according to this Article, the Department shall notify the owner in writing of all violations noted.
- B.** The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the

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vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41, Chapter, Article 10 in any suspension or revocation proceeding.

- C. The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.
- D. The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

Historical Note

Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1117. Reinstatement

Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

Historical Note

Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1118. Repealed**Historical Note**

Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1119. Repealed**Historical Note**

Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1120. Repealed**Historical Note**

Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

ARTICLE 12. WASTE TIRES**R18-13-1201. Definitions**

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

“Aquifer protection permit” means an authorization issued by the Department under A.R.S. § 49-241 et seq.

“Burial cell” means an area where mining waste tires are placed in or on the land for burial.

“Mining” means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.

“Mining facility” means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.

“Mining waste tire” means an off-road tire that is greater than three feet in outside diameter that was used in mining.

“Operator” means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.

“Person” is defined in A.R.S. § 49-201.

“Waste tire cover” means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

Historical Note

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1202. Burial of Mining Waste Tires

- A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.
- B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.
- C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.
- D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

Historical Note

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1203. Cover Requirements

- A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.
- B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.
- C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

Historical Note

Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1204. Annual Report

By March 30 of each year, until a burial cell closure certification is filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

Historical Note

Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1205. Burial Cell Closure Certification

An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

Historical Note

Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1206. Storage

At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

Historical Note

Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1207. Maintenance of Records

For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

Historical Note

Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1208. Inspections

The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

Historical Note

Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1209. Repealed**Historical Note**

Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1210. Waste Tire Cover

Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at a time.

Historical Note

Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

- A. A new waste tire collection site shall not begin operation after July 20, 2011, until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.
- B. The owner or operator shall pay a \$75 registration fee annually thereafter within 30 days of invoice receipt.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

- A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
- B. A \$75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.
- C. For the purposes of this Section:
1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
 2. "Outdoors" means other than inside a building with a weatherproof roof.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.

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3. R18-13-501.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 13. SPECIAL WASTE**R18-13-1301. Definitions**

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
2. "Exception report" means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator's instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. "Generator" means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. "Identification number" means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. "Off-site consignment" means a generator's delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. "Off-site" means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. "Operator" means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. "Recycling" means recycling as defined in A.R.S. § 49-831(21).
9. "Shredder residue" means waste from the shredding of motor vehicles.
10. "Significant manifest discrepancy" means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. "Special waste receiving facility" means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. "Special waste manifest" means a form provided by the Department, shown as Exhibit A to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. "Special waste shipper" means a person who transports special waste for off-site treatment, recycling, storage, or disposal.

14. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

Historical Note

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1302. Special Waste Generator Manifesting Requirements

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as Exhibit B to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.
- B. Prior to off-site consignment of special waste, the generator shall do all of the following:
 1. Complete and sign the "Generator" section of a special waste manifest.
 2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
 3. Retain the generator's copy of the special waste manifest.
 4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.
- C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.
- D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.
- E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:
 1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
 2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.
- F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.
- G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

Historical Note

Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1303. Special Waste Shipper Manifesting Requirements

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Exhibit B to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-8-302.
 2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:
 - a. Return the special waste to the generator, or
 - b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.
- C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

Historical Note

Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Exhibit B to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
1. Enter the identification number.
 2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
 3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.
- C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.
- D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
 2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

Historical Note

Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1305. Records

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

Historical Note

Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1306. Reserved**R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles**

- A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:
1. Sample collection shall be done in accordance with one of the following:
 - a. Sampling procedure 1, consisting of both of the following steps:
 - i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
 - ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
 - b. Sampling procedure 2, consisting of both of the following steps:
 - i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This

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- process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
- ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.
 3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.
 4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:
 - a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlorinated Biphenyls (PCB) analysis as set forth in subsection (A)(10).
 - b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).
 - c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.
 5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.
 6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.
 7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.
 8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) above are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
 9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24, Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
 10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
- B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.
 - C. The generator shall do all of the following:
 1. Secure the facility to prevent unauthorized entry;
 2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
 3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than 1×10^{-7} cm/s;
 4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
 5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
 6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than 1×10^{-7} cm/s;
 7. Record the date accumulation of shredder residue begins.
 - D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C) of this Section.
 - E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.
 - F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:
 1. \$1.49 per cubic yard of uncompacted shredder residue; or

- 2. \$3.38 per cubic yard of compacted shredder residue received; or
- 3. \$4.50 per ton; and
- 4. Not more than \$45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

(Supp. 00-3).

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

Historical Note

Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

Table A. Target Analyses and Sampling Frequency

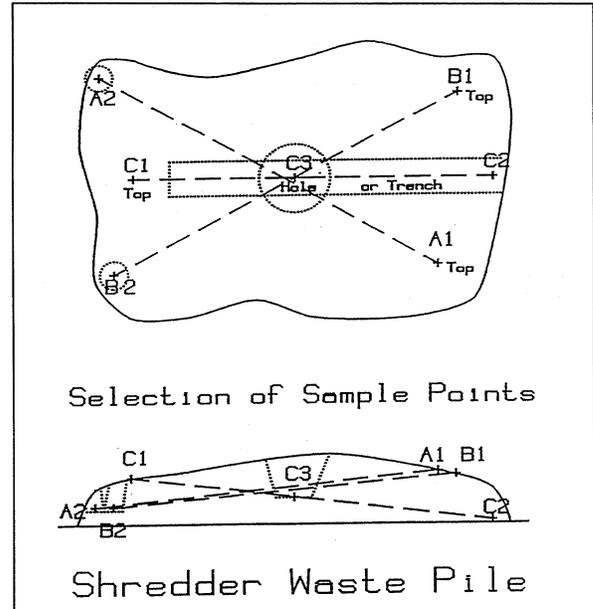
Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

* Toxicity Characteristic Leaching Procedure (TCLP)

Historical Note

Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000

Exhibit 1. Selection of Sample Points, Shredder Waste Pile



Historical Note

Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	<h1 style="margin: 0;">ADEQ</h1>	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)
1. Mark Appropriate Box: <input type="checkbox"/> Generator <input type="checkbox"/> Shipper <input type="checkbox"/> Receiving Facility <input type="checkbox"/> Multiple			
2. Company/Agency Name			
3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).			
4. Company/Agency Mailing Address (If different than above).			
5. Company/Agency Contact (Person to contact regarding special waste activities). Name:			
Job Title: _____ Phone Number: () _____			
6. Company/Agency Contact Address.			
7. Name and Address of Company's/Agency's Legal Owner.			
Phone Number: () _____			
Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.			
8. Signature: _____ 9. Name and Official Title: (Type or Print) _____ 10. Date Signed: _____			
11. Please list special wastes generated, transported, stored, or received by applicant.			

Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.

1. Place an "X" in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company's/agency's legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

Historical Note

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
SPECIAL WASTE MANIFEST

G e n e r a t o r	1. Generator's AZ ID No.		Emergency Response Notification Phone Number	
	3. Generator's Name and Mailing Address			
	Generator's Phone Number and Area Code			
	4. Transporter 1 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	5. Transporter 2 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	6. Primary Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
			Facility's Phone No.	
	7. Alternate Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
		Facility's Phone No.		
8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste)		Containers No.	Total Quantity	Unit Wt/Vol
		Mark "X" if Haz Mat		
9. Additional information on transportation, treatment, storage, or disposal				
10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.				Date
Printed/Typed Name		Signature		
T r a n s p o r t	11. Transporter 1 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
	12. Transporter 2 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
F a c i l i t y	13. Discrepancy Indication Space			
	14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item.			Date
	Printed/Typed Name		Signature	

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Instructions for the Completion of the ADEQ Special Waste Manifest

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

Mark an "X" in this column if waste is classified as a hazardous material.

Container Number

Enter the number of containers being shipped for each waste.

Total Quantity

Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

Unit weight or volume

P - Pounds

G - Gallons

Y - Cubic Yards

9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

Historical Note

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS**R18-13-1401. Definitions**

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Administrative consent order" means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.
2. "Alternative treatment technology" means a treatment method other than autoclaving or incineration, that achieves the treatment standards described in R18-13-1415.
3. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
4. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. "Biohazardous medical waste" is composed of one or more of the following:
 - a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
 - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components.
 - c. Human pathologic wastes: Discarded organs and body parts removed during surgery. Human pathologic wastes do not include the head or spinal column.
 - d. Medical sharps: Discarded sharps used in animal or human patient care, medical research, or clinical lab-

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- oratories. This includes hypodermic needles; syringes; pipettes; scalpel blades; blood vials; needles attached to tubing; broken and unbroken glassware; and slides and coverslips.
- e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
6. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
 7. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
 8. "Blood and blood products" means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
 9. "C.F.R." means the Code of Federal Regulations.
 10. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
 11. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste.
 12. "Discarded drug" means any prescription medicine, over-the-counter medicine, or controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
 13. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
 14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
 15. "Free flowing" means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.
 16. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
 17. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
 18. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
 19. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
 20. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
 21. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a locking cap.
 22. "Medical waste," as defined in A.R.S. § 49-701, means *"any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste."*
 23. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
 24. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated off site by health workers in providing services. "Off site" for purposes of this definition means a location other than a hospital or clinic.
 25. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
 26. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
 27. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
 28. "Radioactive material" has the meaning under A.R.S. § 30-651.
 29. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
 30. "Spill" means either of the following:
 - a. Any release of biohazardous medical waste from its package while in the generator's storage area.
 - b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
 31. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
 - a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
 - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
 32. "Technology provider" means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
 33. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
 34. "Transportation management plan" means the transporter's written plan consisting of both of the following:
 - a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 - b. The emergency procedures used by the transporter for handling spills or accidents.
 35. "Transporter" means a person engaged in the hauling of biohazardous medical waste from the point of generation

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- to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
36. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
 37. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
 38. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
 39. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
 40. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
 41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
 42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.
6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
 7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
 8. A person who generates medical sharps in the preparation of human remains.
 9. A person who generates medical sharps in the treatment of animals.
 10. A generator of discarded drugs not returned to the manufacturer.
- B.** The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects, or handles biohazardous medical waste inside the generator's place of business.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1403. Exemptions; Partial Exemptions**R18-13-1402. Applicability****A.** This Article applies to the following:

1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
 2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
 3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
 4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
 5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.
1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
 2. A person in possession of radioactive materials.
 3. A person who returns unused medical sharps to the manufacturer.
 4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.
 5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
 6. A person in possession of human bodies regulated by A.R.S. Title 36.
 7. A person who sends used medical sharps via the United States Postal Service or private shipping agent to a treatment facility.
- B.** The following are conditionally exempt from the requirements of this Article:
1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, if medical sharps are generated during the preparation of the human remains, they must be disposed of as prescribed by this Article.
 2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
 3. A person who discharges discarded drugs and liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
 4. A person who possesses hazardous waste regulated by A.R.S. Title 49, Chapter 5.
 5. A health care worker who uses a multi-purpose vehicle in the conduct of routine business other than transporting waste, is exempt from the requirements of R18-13-1409

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if the health care worker complies with all of the following:

- a. Packages the biohazardous medical waste according to R18-13-1407.
 - b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
 - c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
 - d. Cleans the vehicle when it shows visible signs of contamination.
 - e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
 7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.
- C. The following are exempt from some of the requirements of this Article:
1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
 2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1404. Transition and Compliance Dates

- A. Unless otherwise specified in subsections (B) through (H), the date for compliance with this Article by generators, transporters, treaters, providers of alternative medical waste technology, and persons in possession of untreated biohazardous medical waste is the effective date of this Article.
- B. A person who provides alternative medical waste treatment technology used by a generator before the effective date of this Article shall perform all of the following:
 1. Register the alternative medical waste technology with the Department as prescribed in R18-13-1414 within 90 days after the effective date of this Article.
 2. Not provide alternative technology 90 days after the effective date of this Article unless a Departmental registration certificate is received.
 3. After receipt of the Departmental registration certificate, provide to all generators using the alternative treatment technology a copy of the registration certificate and the alternative technology manufacturer's specifications.
- C. A generator who utilizes alternative medical waste treatment technology before the effective date of this Article shall obtain, within 180 days after the effective date of this Article, the Departmental registration number and equipment specifications, described in R18-13-1414, from the technology provider. If documentation of Departmental registration is not on file with the generator, the Department shall classify biohaz-

ardous medical waste treated 180 days after the effective date of this Article using the unregistered alternative treatment technology as untreated biohazardous medical waste.

- D. A generator who utilizes incineration or autoclaving for onsite treatment of biohazardous medical waste before the effective date of this Article may continue to do so after the effective date if the treatment requirements of R18-13-1415 and the onsite treatment requirements of R18-13-1405 are met.
- E. A transporter of biohazardous medical waste in business on the effective date of this Article shall register, within 90 days after the effective date of this Article, as required in R18-13-1409(A).
- F. An operator of a medical waste storage facility, who has obtained approval for a solid waste facility under A.R.S. § 49-762.04 on or before the effective date of this Article, may continue to store biohazardous medical waste if the facility complies with the design and operation standards prescribed in R18-13-1411. The addition of a refrigeration unit is a Type II change as described in R18-13-1413(A)(2).
- G. An operator of a medical waste transfer facility shall obtain solid waste facility plan approval that meets the requirements of R18-13-1410 within 180 days after the effective date of this Article.
- H. An operator of a medical waste treatment facility who has obtained Departmental plan approval to operate a medical waste treatment facility on or before the effective date of this Article may continue to operate under that plan approval if both of the following are met:
 1. The treater complies with the treatment standards of R18-13-1415 and the recordkeeping requirements of R18-13-1412, except as noted in the subsection below.
 2. If the treater determines that the waste is not being treated to the applicable treatment standards of R18-13-1415, the treater informs the Department within two working days after the date on the determination, and within 30 working days enters into an administrative consent order to bring the facility into compliance.
- I. An operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan within 180 days after the effective date of this Article.
- J. Notwithstanding subsection (H), if the Department determines that an updated solid waste facility plan is required, a treater shall submit an updated plan within 180 days after the date on the Department's determination. The treater may continue to operate under the conditions specified in subsection (H) of this Section while the Department reviews and determines whether to approve or deny the updated plan.
- K. After the effective date of this Article, solid waste facility plan approval under A.R.S. § 49-762.04 is required for a new medical waste treatment or disposal facility before construction.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1405. Biohazardous Medical Waste Treated On Site

- A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.
- B. A generator who uses:
 1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
 2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or

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3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).
- C.** A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:
1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
 2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
 3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
 4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.
- D.** A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:
1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
 2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
 3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
 - a. Duration of time for each treatment cycle.
 - b. The temperature and pressure maintained in the treatment unit during each cycle.
 - c. The method used to determine treatment parameters in the manufacturer's specifications.
 - d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
 - e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.
 4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.
- E.** A generator who uses an alternative treatment method on site shall comply with all of the following requirements:
1. Use only alternative treatment methods registered under R18-13-1414.
 2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render this waste non-recognizable and ensure effective treatment.
 3. Follow the manufacturer's specifications for equipment operation.
 4. Supply upon request all of the following:
 - a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
 - b. The equipment specifications that include all of the following:
 - i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
 - ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
 5. Maintain a training manual regarding the proper operation of the equipment.
 6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
 7. Maintain treatment records for six months after the treatment date for each load treated.
 8. Maintain the equipment specifications for the duration of equipment use.
- F.** A generator shall do all of the following:
1. Package the treated medical waste according to the waste collection agency's requirements;
 2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
 3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
 4. Make treatment records available for Departmental inspection upon request.
- G.** A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.
- H.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

- A.** A generator of biohazardous medical waste shall package the waste as prescribed in R18-13-1407 before self-hauling or before setting the waste out for collection by a transporter.
- B.** A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for one year from the date of acceptance by the transporter. The tracking document shall contain all of the following information:
1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
 2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
 3. Identification number attached to bags or containers.
 4. Date the biohazardous medical waste is collected.
- C.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.
- D.** A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1407. Packaging

- A.** A generator who sets biohazardous medical waste out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
1. A red disposable plastic bag that is:
 - a. Leak resistant,
 - b. Impervious to moisture,

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- c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
 - d. Sealed to prevent leakage during transport,
 - e. Puncture resistant for sharps, and
 - f. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.
2. A reusable container that bears the universal biohazard symbol and that is:
- a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
 - b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
 - i. Exposure to hot water at a temperature of at least 180 degrees Fahrenheit for a minimum of 15 seconds.
 - ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
 - iii. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.
- B.** A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.
- C.** A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.
- D.** A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1408. Storage

- A.** A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.
- B.** Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:
1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
 2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DES-

PERDICIOS BIOLÓGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

- C.** Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:
1. Keep putrescible biohazardous medical waste unrefrigerated if it does not create a nuisance. However, refrigerate at 40° F. or less putrescible biohazardous medical waste kept more than seven days.
 2. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
 3. Keep the storage area free of visible contamination.
 4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
 5. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
 6. Notwithstanding subsection (C)(1), if odors become a problem, a generator shall minimize objectionable odors and the off-site migration of odors. If the Department determines that a generator has not acted or adequately addressed the problem, the Department shall require the waste to be removed or refrigerated at 40° F or less.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1409. Transportation; Transporter License; Annual Fee

- A.** A transporter shall obtain a transporter license from the Department as provided under subsections (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
- B.** Beginning on July 1, 2012, a transporter shall pay an annual fee of \$750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
1. Transporters registered with the Department before July 1, 2012, shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
 2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.
 3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.
- C.** To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
1. The name, address, and telephone number of the transportation company or entity.
 2. All owners' names, addresses, and telephone numbers.
 3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

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4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
 5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
 6. A copy of the transportation management plan that meets the requirements in subsection (I).
 7. A list identifying each dedicated vehicle.
 8. An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete;
 2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
 3. The applicant has paid a licensing year fee consisting of:
 - a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.
 - b. The annual fee of \$750 for the year as provided for in subsection (B).
 - c. The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.
- E.** A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).
- F.** Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be \$100 and the maximum fee \$5,000.
- G.** An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- H.** Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.
- I.** A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 2. Emergency procedures used for handling spills or accidents.
- J.** A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.
- K.** A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:
1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
 2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
 3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.
- L.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:
1. Subsections (A) and (I) through (M).
 2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.
- M.** A person who transports biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
 2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in R18-13-1406(B), and keep a copy of the tracking document for one year.
 3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
 4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
 5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.
- N.** As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval

- A.** A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.
- B.** If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.
- C.** A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1411. Storage and Transfer Facilities; Design and Operation

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If the biohazardous medical waste will be stored for more than 24 hours, the operator shall equip the facility with a refrigerator to refrigerate the biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F. or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking form. The operator shall sign the tracking form and keep a copy of the acceptance documentation for one year;
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
 - a. Reject the waste and return it to the transporter.
 - b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily as prescribed in R18-13-1407(A)(2).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1412. Treatment Facilities; Design and Operation

- A.** An operator who applies for facility plan approval shall comply with all of the following:
1. Submit to the Department the following documentation:
 - a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
 - b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
 - c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
 - d. Training manual for the equipment.
 - e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.
 2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
 - a. Provisions for treating biohazardous medical waste within 24 hours of receipt or refrigerating immediately at 40° F. or less upon determination that treatment or disposal will not occur within 24 hours.
 - b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
 - c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.
 3. Have on hand written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking form, and written procedures that require compliance with both of the following:
 - a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for one year.
 - b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
 - i. Reject the waste and return it to the transporter.

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- ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
 - iii. If the waste will not be treated immediately, repackage the waste for storage.
4. Assure that the facility is designed to meet both of the following requirements:
 - a. Any floor or wall surface in the processing area of the facility which may come into contact with bio-hazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
 - b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
 5. Store biohazardous medical waste as required in R18-13-1408.
 6. Comply with all of the following if the treatment method is incineration:
 - a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
 - b. Determine whether the ash is hazardous waste as required under R18-8-262.
 7. Conduct any autoclaving according to the manufacturer's specifications for the unit.
 8. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
 9. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
 10. Treat medical sharps as prescribed in R18-13-1419.
 11. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
 - a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
 - b. For chemical treatment, a description of the solution used.
 - c. For incineration, the temperature maintained in the treatment unit during operation.
 - d. Any other operating parameters in the manufacturer's specifications.
 - e. A description of the treatment method used and a copy of the maintenance test results.
 12. Not open the red bag prior to treatment unless opening the bag is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
- B.** The treater shall make treatment records available for Departmental inspection upon request.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1413. Changes to Approved Medical Waste Facility Plans

- A.** As required by A.R.S. § 49-762.06, before making any change to an approved facility plan a treatment facility owner or oper-

ator shall submit a notice to the Department stating which of the following categories of change is requested:

1. A Type I change to an approved medical waste facility plan is a change not described in subsection (A)(2), (3), or (4).
 2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.
 3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
 - a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
 - b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
 - c. Treatment technology is changed.
 4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
 - a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
 - b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
 - c. Treatment equipment is added that requires an environmental permit.
 - d. An expansion of the treatment facility onto land not previously described in the approved plan.
- B.** As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:
1. For a Type I change, make the change without notice to, or approval by the Department.
 2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
 3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications

- A.** A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
 2. The name, address, and telephone number of the person who submits the application.
 3. A description of the alternative medical waste treatment method.
 4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
 5. A description of by-products generated as result of the alternative treatment method.
 6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
 7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a labora-

tory independent of any oversight activities by the manufacturer to provide this analysis.

8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
 - a. Unit model number, or serial number.
 - b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
 - c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
 - d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
 9. Written documentation of registration if required by A.R.S. § 3-351.
- B.** The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

- A.** A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
1. A 6 log₁₀ inactivation in the concentration of vegetative microorganisms.
 2. A 4 log₁₀ inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.
- B.** A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
1. Mycobacterial species used as indicators of vegetative microorganisms:
 - a. *Mycobacterium phlei*, or
 - b. *Mycobacterium bovis* (BOG) (ATCC 35743)
 2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 log₁₀ reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 log₁₀ or greater of:
 - a. *Bacillus stearothermophilus* (ATCC 7953), or
 - b. *Bacillus subtilis* (ATCC 19659).
- C.** A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:
1. Microbial inactivation, or "kill" efficacy is equated to "Log₁₀ Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}(\text{cfu/g "I"}) - \text{Log}_{10}(\text{cfu/g "R"})$$
 where:

Log₁₀Kill is equivalent to the term Log₁₀ reduction, "I" is the number of viable test microorganisms introduced into the treatment unit, "R" is the number of viable test microorganisms recovered from the treatment unit, and "cfu/g" are colony forming units per gram of waste solids.

2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
 - a. Step 1:
 - i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
 - ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
 - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
 - iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
 - v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log₁₀ reduction for vegetative microorganisms or a 4 Log₁₀ reduction for bacterial spores. This can be defined by the following equation:

$$\text{Log}_{10}\text{RC} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{NR}$$
 or

$$\text{Log}_{10}\text{NR} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{RC}$$
 where:

Log₁₀RC is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:

Log₁₀RC is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;

Log₁₀IC is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;

Log₁₀NR is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. Log₁₀NR

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represents an accountability factor for microbial loss.

- b. Step 2:
- i. Use microbial cultures of the same concentration as in Step 1.
 - ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
 - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
 - iv. Plate recovered microorganism suspensions to quantify microbial recovery.
 - v. From data collected from Step 1 and Step 2, the level of microbial inactivation, "Log₁₀ Kill", is calculated by employing the following equation:

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}\text{IT} - \text{Log}_{10}\text{NR} - \text{Log}_{10}\text{RT}$$
 where:
 Log₁₀Kill is equivalent to the term Log₁₀ reduction;
 Log₁₀IT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit.

$$\text{Log}_{10}\text{IT} = \text{Log}_{10}\text{IC};$$

 Log₁₀NR is the number of "Control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;
 Log₁₀RT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.
- D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1416. Recycled Materials

- A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.
- B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.
 2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1417. Disposal Facilities: Operation

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all the following in design and operational requirements:

1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1418. Discarded Drugs

- A. A generator of discarded drugs not returned to the manufacturer shall destroy the drugs on site prior to placing the waste out for collection. A generator shall destroy the discarded drugs by any method that prevents the drug's use. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.
- B. A generator of discarded drugs may flush them down a sanitary sewer if allowed by the wastewater treatment authority.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1419. Medical Sharps

Medical sharps shall be handled as follows:

1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
 - a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
 - b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. An Arizona treatment facility shall render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
3. A person operating a treatment facility who accepts medical sharps for treatment shall either:
 - a. Encapsulate medical sharps to prevent stick hazard, or
 - b. Use any other process that prevents a stick hazard.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1420. Additional Handling Requirements for Certain

Wastes

- A.** A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A) and packaged inside a watertight primary container with absorbent packing materials if shipped off site for treatment or disposal. The primary container shall be placed inside a secondary inner container that is then placed inside an outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
 2. Chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
 3. Experimental or research animal waste shall be handled as follows:
 - a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
 - b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
 - i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
 - ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).
- B.** If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

ARTICLE 15. RECODIFIED

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

R18-13-1501. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

R18-13-1502. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

R18-13-1503. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section

recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

R18-13-1504. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

R18-13-1505. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

R18-13-1506. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

R18-13-1507. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

R18-13-1508. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

R18-13-1509. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

R18-13-1510. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

R18-13-1511. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

R18-13-1512. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section

actually recodified to R18-9-1012 (Supp. 01-4).

R18-13-1513. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

R18-13-1514. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

Appendix A. Recodified

Historical Note

Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).

R18-13-1601. Definitions

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 100 mg/kg which are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
8. "PCS" means petroleum-contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:
 - a. TPH which exceeds concentrations of 5,000 mg/kg,
 - b. Benzene which exceeds concentrations of 0.13 mg/kg,
 - c. Toluene which exceeds concentrations of 200 mg/kg,
 - d. Ethylbenzene which exceeds concentrations of 68 mg/kg,
 - e. Total xylene which exceeds concentrations of 44 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum, which are not hazardous waste and which meet any of the following:
 - a. Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;
 - b. Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg.
14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce TPH, benzene, toluene, ethylbenzene, or total xylene concentrations and which complies with the requirements of R18-13-1610.
17. "Total petroleum hydrocarbons" or "TPH" means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.
18. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
 - a. Whether the waste is amenable to the treatment process,
 - b. What pretreatment is required,
 - c. The optimal process conditions needed to achieve the desired treatment,
 - d. The efficiency of a treatment process,
 - e. The characteristics and volumes of residual contaminants from a particular treatment process,
 - f. Toxicological and health effects.
19. "Treatment facility" means a special waste receiving facility which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, and at which PCS receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.

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Historical Note

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1602. Applicability

- A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.
- B. PCS which is used in a treatability study shall comply with all of the following:
 1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
 2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
 3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
 4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
 5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
 6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
 7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
 1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
 2. Maintains records in accordance with R18-13-1614,
 3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
 4. Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).

Historical Note

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1603. Exemptions

- A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.
- B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.
- C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.

- D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.
- E. Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:
 1. The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.
 2. The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.

Historical Note

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1604. Waste Determination

- A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:
 1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.
 2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.
- B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:
 1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
 2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
- C. Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.
- D. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:
 1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire

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authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.

2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

Historical Note

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1605. Transportation

- A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.
- B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.
- C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

Historical Note

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1606. Fees

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of \$4.50 per ton but not more than \$45,000 per generator site per year for PCS that is transported to the facility.

Historical Note

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1607. Facility Approval; Application

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.
- C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:
 1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.
 2. An engineering report which includes all of the following:
 - a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.
 - b. A site description which includes general information on the geology, hydrogeology, soils, and land

use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.

- c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
 - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
 - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
 - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
 - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
 - e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
 - f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
 - g. Procedures for collecting and managing run-off which comes in contact with PCS;
 - h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
 - i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
 - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
 - b. Information on site conditions and characterization of the waste received during the life of the facility;
 - c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
 - d. A description of plans for use of the land site after closure;
 - e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.
- D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.
- E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.
- F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

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Historical Note

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1608. General Design and Performance Standards

- A.** A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
 2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.
- B.** A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
 - a. Maintain a maximum hydraulic conductivity of no more than 1×10^{-7} cm/sec;
 - b. Be designed to provide structural integrity throughout the life of the facility;
 - c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
 2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
 - a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
 - b. The operating methods, processes, or other alternatives to be used at the facility;
 - c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.
- C.** A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.
 2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
 3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
 4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance with rules promulgated pursuant to A.R.S. § 49-761 et seq.
- D.** A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).

- E.** A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

Historical note

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1609. Treatment Facility

- A.** The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
 2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
 3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.
- B.** A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
 2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
 - a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
 - b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
 3. The liner component shall consist of one of the following:
 - a. A synthetic liner which is compatible with the waste and which has a minimum 6" buffer layer of sand or soil between the liner and the PCS.
 - b. A compacted soil or admixed liner provided with a minimum 6" buffer layer of sand or soil between the liner and the PCS.
 - c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
 4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
 5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.
 6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

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Historical Note

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1610. Temporary Treatment Facility

- A.** The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.
- B.** A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
 2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
 3. Application information required pursuant to A.R.S. § 49-762 for plan approval for temporary treatment facilities;
 4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
 5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
 6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
 7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
 8. An operational plan which includes all of the following:
 - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
 - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
 - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
 - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
 9. A closure and post-closure care plan which includes both of the following:
 - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
 - b. A description of the sampling plan utilized to sample background soil beneath the site following closure.
- C.** A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God, which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by

courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.

2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
 - a. A description of the circumstances causing any delay;
 - b. Evidence of the existence of the circumstance;
 - c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
 - d. A timetable by which the owner and operator will resume and complete required performance.
 3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.
- D.** A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).
- E.** PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.
- F.** In accordance with A.R.S. § 49-762(F), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762(L).

Historical Note

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1611. Storage Facility

- A.** A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.
- B.** Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.
- C.** A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
1. The containment system shall meet the requirements of R18-13-1609(B).
 2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.
- D.** A PCS storage area or each tank or container used for storage shall be marked as follows:
- CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL
GENERATOR NAME:
GENERATOR ID#:
ACCUMULATION START DATE:
- The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.
- E.** A tank or container used to store PCS shall meet all of the following requirements:
1. Prevent leakage of PCS and any free liquids from the tank or container;
 2. Be made of, or lined with, materials which will not react with the PCS;

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3. Be kept closed during storage except to add or remove PCS;
 4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
 5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.
- F. A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
 2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
 - a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
 - b. Malfunctioning of wind dispersal control systems;
 - c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

Historical Note

Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1612. Accumulation Sites

- A. PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.
- B. An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.
- C. While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

Historical Note

Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1613. Disposal

- A. PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).
- B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
 1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
 2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML compo-

nent shall be installed in direct and uniform contact with the compacted soil component.

Historical Note

Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1614. Records

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

Historical Note

Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

ARTICLE 17. RESERVED**ARTICLE 18. RESERVED****ARTICLE 19. RESERVED****ARTICLE 20. RESERVED****ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill

- A. An existing solid waste landfill, except those described in subsection (C), shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:
 1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, \$1,250.
 2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, \$2,500.
 3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, \$7,500.
 4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, \$12,500.

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5. Non-municipal solid waste landfills shall pay a flat fee of \$3,750.
6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of \$3,750.
- B.** The Department shall determine the amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period:
 - a. As the reported tons of solid waste received on the disposal fee invoice; or
 - b. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice and reported under A.R.S. § 49-836(A)(1); or
 2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
 - a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
 - b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
 - c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
- C.** For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is \$1,250.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2103. Annual Landfill Registration: Due Date and Fees

- A.** An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is \$1,250.
 2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
 3. The annual registration fee remains \$1,250 until the first annual registration period after the first full quarter of the defined time period.

- B.** After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first registration period after the solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.
- C.** From the time a solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is \$1,250.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 22. RESERVED**ARTICLE 23. RESERVED****ARTICLE 24. RESERVED****ARTICLE 25. EXPIRED****R18-13-2501. Expired****Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J), at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

ARTICLE 26. EXPIRED**R18-13-2601. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2602. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2603. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2604. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

ARTICLE 27. EXPIRED**R18-13-2701. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R.

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848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2702. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section expired

under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2703. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section and fee table expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

General and Specific Authorizing Statutes; ADEQ NFER

General Authorizing Statutes: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Authorizing Statutes: A.R.S. §§ 49-701.01(C), 49-762, 49-762.03(F), 49-857(C), and 49-851 through 49-868

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

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

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and

operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

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

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

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

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-701.01. Definition of solid waste; exemptions

A. "Solid waste" means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

B. The following are exempt from the definition of solid waste:

1. Hazardous waste regulated pursuant to chapter 5 of this title.

2. Waste that contains radioactive materials subject to the atomic energy act of 1954 (42 United States Code sections 2011 through 2297, 68 Stat. 919) or title 30, chapter 4.

3. Any discharge from a facility regulated pursuant to chapter 2, article 3 of this title.

4. Any discharge regulated pursuant to section 402 or 404 of the clean water act (33 United States Code sections 1342 and 1344).

5. Domestic sewage.

6. Discharges into a publicly or privately owned treatment works including the treatment works and the sewer collection system.

7. Irrigation waters.

8. Irrigation return flows.

9. Reclaimed wastewater from wastewater reuse facilities.

10. Leachate resulting from the direct natural infiltration of precipitation through undisturbed regolith or bedrock, if pollutants are not added by man.

11. Storm water.

12. Substances and materials that remain on site as specifically approved in a work plan or other approval by the department in the course of remedial or corrective actions undertaken pursuant to any of the following:

(a) Chapter 2, articles 3 and 5 of this title.

(b) Chapters 5 and 6 of this title.

(c) The comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9675).

(d) The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

(e) The resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) Chapter 1, article 5 of this title.

13. Water used in gardening, lawn care, landscape maintenance and related activities.

14. Discharges from ponds used for watering livestock and wildlife.

15. Landscaping rubble used to reclaim land.

16. Mining industry off-road waste tires that are larger than three feet in outside diameter and that are buried at the site and rock, copper concentrate, leachate material, tailing and slag that are either of the following:

(a) Produced and maintained at the site of the mining or metallurgical operation.

(b) Not maintained at the site of a mining or metallurgical operation and that are consolidated at the site of a mining or metallurgical operation that is both of the following:

(i) Located within fifty miles of the materials' current off-site location, or, on written approval of the director, located at a site that is farther than fifty miles of the materials' current off-site location.

(ii) Regulated by a permit issued pursuant to chapter 2, article 3 of this title or by an approved work plan pursuant to chapter 1, article 5 of this title.

17. Inert material.

18. Effluent as defined in section 45-101.

19. Return flows from irrigated agriculture.

20. Materials that are generated on site and that are processed or reused on site if the following conditions are met:

- (a) On-site processing or reuse of the materials is technically feasible.
- (b) At least seventy-five per cent by weight or volume of the materials that are accumulated on site for processing or reuse each year are processed or reused in that same year.
- (c) Materials that are accumulated on site for processing or reuse are managed in a manner that:
 - (i) Controls wind dispersion and other surface dispersion of the materials so that the materials do not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible materials that are dispersed beyond the boundaries of the site shall be collected on a regular basis by the operator of the site.
 - (ii) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soils in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.
 - (iii) Controls vector breeding and fire hazards.
 - (iv) Controls public access to the materials by the use of reasonable measures.

C. Any person may petition the director to exempt a substance as solid waste by submitting a written request to the director. The request may be for a statewide or site-specific exemption. Within ninety days after receipt of a written request, the director shall determine whether to exempt the substance. The director's determination shall be based on a demonstration that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment. The procedure is as follows:

1. Within thirty days after the director's determination to add a substance on a site-specific basis, a notice of that determination shall be published in the Arizona administrative register. A site-specific determination is effective on the date of the director's determination.
2. Within thirty days after the director's determination to add a substance on a statewide basis, the director shall initiate rule making to add the substance to the list of exemptions. This rule making is exempt from the requirements of title 41, chapter 6, except for the requirements regarding public notice. The effective date for the final rule is the effective date for the exemption.

D. Nothing in this section shall affect the department's authority to require abatement of any environmental nuisance pursuant to chapter 1, article 3 of this title.

49-705. Integration of solid waste programs

The director shall consider and integrate federal and state laws and rules and all of the programs authorized in this chapter and those other programs regulating solid waste management that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual regulation to the maximum extent practicable.

49-761. Rule making authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not

apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:
 - (a) Corporate financial test.
 - (b) Local government financial test.
 - (c) Corporate guarantee test.
 - (d) Local government guarantee test.
 - (e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.
9. Multiple financial assurance mechanisms.
10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

49-762. Facilities requiring solid waste facility plans; exemption

A. The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with sections 49-762.03 and 49-762.04:

1. Solid waste land disposal facilities.
2. Biosolids processing facilities.
3. Medical waste facilities.
4. Special waste facilities.
5. Municipal solid waste landfills.
6. Commercial or government-owned household waste composting facilities.
7. A site at which at least five hundred waste tires are stored on any day and any tire is stored for more than twelve months unless the site is a waste tire collection site owned by a municipality or a county.

B. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from submitting a solid waste facility plan pursuant to this section.

49-762.03. Solid waste facility plan approval

A. Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in section 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.
2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to section 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste facility may continue to operate while the department reviews the plan. For an existing public solid waste facility that is currently subject to rules that contain design and operation standards, the owner or operator shall file with the department a solid waste facility plan by October 1, 1996, if the facility has not received plan approval before that date.

B. For a solid waste facility subject to site approval pursuant to section 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved pursuant to section 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

C. The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

D. An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

E. The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

F. The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. After the effective date of this amendment to this section, the director shall establish by rule fees for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan and maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase those fees by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

G. The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of section 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding section 49-881, fees collected by the department for expedited plan review shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

49-851. Definitions; applicability

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.

2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.

3. "Petroleum contaminated soils" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.

4. "Shipper" means a person who transports a special waste in commerce.

5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.

6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.

B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

[49-852. Statutory list of special wastes; best management practices rules; applicability of hazardous waste designation](#)

A. The following are designated as special wastes for purposes of this article:

1. Waste that contains petroleum contaminated soils.
2. Waste from shredding motor vehicles.

B. The director shall establish rules for best management practices for these special wastes pursuant to section 49-855.

C. Notwithstanding section 49-856, the wastes listed pursuant to subsection A of this section are required to comply with those manifest requirements within three months of the adoption of the best management practices.

[49-854. Designation of special wastes; criteria; notice; rules](#)

A. The director shall give public notice pursuant to title 41, chapter 6 of the decision to formally study a waste for possible designation as a special waste pursuant to the criteria established in subsection B of this section.

B. In determining whether a waste shall be designated as a special waste, the director shall consider the potential adverse effects on public health or the environment from the treatment, storage, transportation or disposal of each waste based upon:

1. The acute and chronic toxicity for those wastes including the human or animal data for the following exposures:

(a) Aquatic.

(b) Dermal.

(c) Inhalation.

(d) Oral.

2. The carcinogenic, mutagenic or teratogenic effects of those wastes on humans or other life forms.

3. The degree to which the wastes or degradation products of those wastes are persistent or bioaccumulative in the environment.

4. Information and studies from other states and the federal government if the committee or director finds them to be derived from standard protocols.

5. Other appropriate scientific data, environmental testing or analytical data.

C. The director shall give public notice pursuant to title 41, chapter 6 of the decision to designate or not to designate a waste as a special waste.

D. The director shall by rule, designate a waste as a special waste and adopt best management practices concerning the special waste pursuant to section 49-855 within eighteen months after giving public notice pursuant to subsection C of this section that a waste will be designated as a special waste.

E. The designation of a waste as a special waste and the adoption of best management practices pursuant to section 49-855 shall occur in the same rule making process.

49-855. Best management practices; fee; criteria

A. The director shall adopt, by rule, best management practices for the treatment, storage and disposal of each waste to be designated as a special waste pursuant to this article.

B. In adopting best management practices for a special waste, the director shall consider:

1. The availability, effectiveness, economic feasibility and technical feasibility of alternative handling or management technologies and practice.

2. The potential nature and severity of the effect on public health and the environment resulting from the special waste.

3. Circumstances under which the practices shall be applied including climatological, geological and hydrogeological conditions.

4. Consistency with other federal and state laws, rules and regulations in an effort to avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation under other federal and state laws, rules and regulations.

C. The best management practices adopted by the director shall contain procedures necessary for the protection of public health and the environment for the transportation, treatment, storage and disposal of special wastes. Additional items to be contained in the best management practices shall include at least:

1. A designated time of not less than ninety days beyond which a waste may not be stored.

2. A fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal. After the effective date of this amendment to this section, the department shall establish by rule a fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

D. The director may adopt special waste best management practices that apply to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based upon appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. Nothing in this section shall preclude the director from adopting best management practices under this article which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

49-856. Special waste handling requirements; manifest; exemption

A. The director shall adopt rules by September 1, 1993 that include an Arizona special waste manifest form designed to implement the provisions of this article.

B. Within three months of the adoption of best management practices for a special waste pursuant to section 49-855:

1. A person who generates, transports, offers for transportation or receives special waste for off-site treatment, recycling, storage or disposal shall comply with the rules adopted pursuant to subsection A of this section.

2. A person who transports a special waste that is defined as a hazardous material, hazardous substance or hazardous waste in 49 Code of Federal Regulations part 171 shall do so in accordance with the applicable motor carrier safety provisions of 49 United States Code appendix sections 1801 through 1819 and title 28, chapter 14.

3. A person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director pursuant to section 49-857 or 49-858.

49-857. Special waste management plans; director; approval; fee

A. Except as provided in section 49-858, a facility that plans to manage special waste for treatment, storage or disposal shall apply for and obtain approval of the director.

B. The application shall include all of the following:

1. A complete solid waste facility plan pursuant to section 49-762 that includes a special waste management plan component that complies with best management practices adopted pursuant to section 49-855 for each special waste for that portion of the facility that is engaged in the treatment, storage or disposal of special waste.

2. Evidence of compliance with permit filing requirements pursuant to this title.

C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. The rule making is exempt from title 41, chapter 6, except that the director shall provide for reasonable notice and a hearing. Monies from fees shall be deposited in the solid waste fee fund established by section 49-881.

D. A facility at which the treatment, storage or disposal of special waste occurs only as a result of an episodic release at that facility shall not be subject to the special waste management plan requirements of this section. The special waste shall be managed pursuant to applicable best management practices.

49-857.01. Plan; approval; deadline; judicial review

A. Within ninety days of receipt of the complete plan and other information prescribed by section 49-857, subsection B, the director shall approve in writing any plan or portion of a plan that complies with this article or shall deny in writing any plan or portion of a plan that does not comply with this article.

B. If the director denies a plan or a portion of a plan, the director shall notify the applicant in writing of the specific reasons for denial within ten days. The applicant has an additional ninety days from receipt of the written denial to file a modified plan addressing the specific deficiencies.

C. Within ninety days of receipt of a modified plan, the director shall approve or disapprove in writing the modified plan. The director may issue a compliance order to any applicant who has

failed to submit a modified plan when required as prescribed by subsection B of this section or whose modified plan has been disapproved.

D. Any major modification from an approved plan is subject to review and approval by the director before implementation.

E. If the director fails to approve or disapprove the plan as prescribed by this section, the plan is deemed approved. Except as provided in section 41-1092.08, subsection H, the director's disapproval of a modified plan is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-858. Interim use facilities; special waste

A. A facility that is in operation on the effective date of best management practices rules that are applicable to that facility and that are adopted by the director pursuant to section 49-855 and that manages wastes designated as special waste pursuant to this article for treatment, storage or disposal may continue to manage special waste for treatment, storage or disposal if all of the following conditions are met:

1. Within sixty days after the effective date of adoption of the best management practices that are applicable to the facility, the facility submits a notice to the director that contains the following information:

- (a) Facility name and mailing address.
- (b) Legal description by township, range and section.
- (c) Major design features.
- (d) Type and volume of waste handled.
- (e) Methods of waste management.
- (f) Measures taken to protect the environment and measures taken to protect public health.
- (g) A summary of permits from city, county, state and federal agencies.

2. The facility files an application containing the information required in section 49-857, subsection B within one hundred eighty days of the adoption of best management practices.

B. A generator may treat, store or dispose of special waste at a facility that is managed or operated by that generator and that is in operation on July 3, 1991 if the same conditions prescribed in subsection A of this section are met.

C. The process for plan approval and disapproval shall conform to section 49-857.01.

D. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the application. The director may amend an existing rule or adopt a new rule to establish criteria for those costs.

49-859. Application to water quality permits

A. Neither the classification of a particular type of waste as a special waste nor the adoption or revision of the best management practices criteria constitutes a major modification to a facility

with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

B. The director's approval of a special waste management plan either before or after the adoption of best management practices criteria does not constitute a major modification of a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

49-860. Annual reporting requirements; inspections

A. A shipper required to comply with the special waste manifesting procedures of this article shall report the following information to the department on or before March 1 of each year:

1. A shipping description of the special waste shipped during the preceding year.
2. The volume or weights of each type of special waste shipped during the preceding year.
3. The facility to which the special waste was shipped, identified by name, address, location and groundwater quality protection permit number or aquifer protection permit number, if applicable.

B. A facility or person that receives from off site a special waste for treatment, storage or disposal shall report the following information to the department on or before March 1 of each year:

1. The shipping descriptions of each special waste received during the preceding year.
2. The volume or weight of each type of special waste received during the preceding year.
3. For each special waste type, the identity by generator name, address, location, telephone number and amount of that special waste sent to the facility during the preceding year.
4. For each special waste type received, a description of the methods and practices used by the receiving facility or person to treat, store or dispose of the special waste.

C. Generators who treat, store or dispose of special waste shall keep records of the volume or weights of each type of special waste handled. Generators who treat, store or dispose of special waste shall report to the department on or before March 1 of each year for each facility:

1. The volume or weight of each type of special waste treated, stored or disposed of on site for the preceding year.
2. The volume or weight of each type of special waste treated, stored or disposed of off site for the preceding year.
3. For each type of special waste disposed, a description of the methods and practices used to minimize the amount or toxicity of the waste before disposal or reuse that constitutes disposal.
4. The volume or weight of waste received pursuant to section 49-863, subsection G.

D. The department may conduct inspections of facilities and records in order to enforce this section.

49-861. Violation; classification; civil penalty

A. Beginning January 1, 1993 a person who knowingly violates this article is guilty of a class 6 felony.

B. A person who violates any provision of this article or a rule or order adopted or issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day for each violation. In issuing any final order in any civil action brought under this section, the court may award costs of litigation including reasonable attorney and expert witness fees to any substantially prevailing party if the court determines that an award is appropriate.

C. The attorney general, at the request of the director, shall file an action in superior court to recover civil penalties provided by this section.

49-862. Compliance orders; injunctive relief

A. If the director has reasonable cause to believe that a person is violating this article or a rule adopted pursuant to this article, the director may serve on the person an order requiring compliance with that provision or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance that the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10.

B. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice that constitutes a violation for which he is authorized to issue an order pursuant to this section, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

C. If the director has reasonable cause to believe that a person is engaging in an act or practice in violation of this article that causes an imminent and substantial endangerment to the public health or environment, whether or not the person has requested a hearing, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

49-863. Special waste management fee; exemption

A. The director shall collect the fee established by section 49-855, subsection C from the special waste treatment, storage or disposal facility that first receives the waste. Any government entity that is required to collect a fee pursuant to this section may establish fees to recover the costs of collection and administration.

B. A generator who ships special waste for purposes of treatment, storage or disposal to a facility in this state that is not regulated by the department shall retain for three years accurate records of the special waste transported to a facility and shall pay a fee to the department at the same rate and in the same manner as provided in subsection A of this section.

C. Each operator or person who is required to pay a special waste management fee shall make the fee payment as determined by the department.

D. Each fee payment shall be accompanied by a form furnished by the department and completed by the operator. The form shall state the total volume or weight of the special waste transported to or disposed at that facility during the payment period and shall provide any other information deemed necessary by the department. The operator shall sign the form.

E. If an operator or person fails to pay the fee as provided in subsection C of this section, that operator or person is additionally liable for interest on the unpaid amount at a rate prescribed by section 49-113.

F. Monies collected pursuant to this section shall be deposited in the solid waste fee fund established pursuant to section 49-881.

G. A generator who ships special waste for purposes of treatment, recycling, storage or disposal from a facility that is managed or operated by that generator to another facility that is managed or operated by that generator is exempt from the fee collected pursuant to this section.

H. A generator who treats, recycles, stores or disposes of special waste on site at a facility that is managed or operated by the generator is exempt from the fee collected pursuant to this section.

I. State agencies, including state universities, are not exempt from the fees prescribed in this section.

49-865. Inspections

The department may conduct such inspections of facilities that manage special waste, including premises and equipment, as are necessary. The department shall give the management agency or the owner or operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

49-866. Orders; monitoring; pollution control devices

A. Except as otherwise provided in sections 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a special waste facility if the requirements of subsection B of this section have been met.

B. Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The special waste facility may adversely affect public health or the environment.
2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the special waste disposal facility.
3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.
4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.

5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.

6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

49-868. [Agency orders; appeal](#)

Any final agency order issued pursuant to this article is appealable pursuant to title 41, chapter 6, article 10.

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

A.R.S. § 49-701

A.R.S. § 49-851

R18-9-1001.

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
2. "Administrator" means the administrator of the United States environmental protection agency.
3. "Closed solid waste facility" means any of the following:
 - (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.
 - (b) A public solid waste landfill that meets any of the following criteria:
 - (i) Ceased receiving solid waste prior to July 1, 1983.
 - (ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.
 - (iii) Received approval for closure from the department.
 - (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
6. "County" means:
 - (a) The board of supervisors in the context of the exercise of powers or duties.
 - (b) The unincorporated areas in the context of area of jurisdiction.
7. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.
8. "Discharge" has the same meaning prescribed in section 49-201.

9. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.
10. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.
11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.
12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.
13. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.
14. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.
15. "Inert material":
- (a) Means material that satisfies all of the following conditions:
- (i) Is not flammable.
- (ii) Will not decompose.
- (iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 20 when subjected to a water leach test that is designed to approximate natural infiltrating waters.
- (b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete, but does not include special waste, hazardous waste, glass or other metal.
16. "Land disposal" means placement of solid waste in or on land.
17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and no more than ten per cent by volume of vegetative waste.
18. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.
19. "Medical waste" means any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.
20. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.

21. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.

22. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

23. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

24. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

25. "Public solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

26. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.

27. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

28. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

29. "Solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

- (f) A closed solid waste facility.
- (g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.
- (h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.
- (i) A site where solid waste generated in street sweeping activities is stored, processed or treated prior to disposal at a solid waste facility authorized under this chapter.
- (j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site prior to disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.
- (k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair provided the following conditions are met:
 - (i) When the project is completed there will not be an increase in leachate that would result in a discharge.
 - (ii) When the project is completed the concentration of methane gas will not exceed twenty-five per cent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.
 - (iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.
 - (iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.
- (l) Agricultural on-site disposal as provided in section 49-766.
- (m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.
- (n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.
- (o) Wastewater treatment facilities as defined in section 49-1201.
- (p) An on-site single family household waste composting facility.
- (q) A site at which five hundred or fewer waste tires are stored.
- (r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.
- (s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

30. "Solid waste landfill" means a facility, area of land or excavation in which solid wastes are placed for permanent disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.

31. "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

32. "Solid waste management plan" means the plan which is adopted pursuant to section 49-721 and which provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

33. "Storage" means the holding of solid waste.

34. "Transfer facility" means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste. Transfer facility includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

35. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

36. "Vegetative waste" means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Vegetative waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

37. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

38. "Waste tire" does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

39. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

49-851. [Definitions; applicability](#)

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.
 2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.
 3. "**Petroleum contaminated soils**" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.
 4. "Shipper" means a person who transports a special waste in commerce.
 5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.
 6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.
- B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
 - a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and

- b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
 - a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
 - b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
 - c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
 - d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
 - e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
 - f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
 - g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. "*Clean water act*" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376). A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that

receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.

15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
16. "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.
17. "Exceptional quality biosolids" means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
18. "Feed crops" means crops produced for animal consumption.
19. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
20. "Food crops" means crops produced for human consumption.
21. "Gravel" means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
22. "Industrial wastewater" means wastewater that is generated in a commercial or industrial process.
23. "Land application," "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.
24. "Monthly average" means the arithmetic mean of all measurements taken during a calendar month.
25. "Municipality" means a city, town, county, district, association, or other public body, including an intergovernmental agency of two or more of the foregoing entities created by or under state law. The term includes special districts such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
26. "*Navigable waters*" means *the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7))*. A.R.S. § 49-201(21).
27. "Other container" means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
28. "Pathogen" means a disease-causing organism.
29. "*Person*" means *an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity*. A.R.S. § 49-201(26).
30. "Person who prepares biosolids" means a person who generates biosolids during the treatment of domestic sewage in a treatment works, packages biosolids, or derives a new product from biosolids either through processing or by combining it with another material, including blending several biosolids together.

31. "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.
32. "Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
33. "Pollutant limit" means:
 - a. A numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
 - b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
 - c. The volume of biosolids that can be applied to a unit area of land such as gallons per acre.
34. "Privately owned treatment works" means a device or system owned by a non-governmental entity used to treat, recycle, or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste that is generated off-site.
35. "Public contact site" means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to biosolids.
36. "Reclamation" means the use of biosolids to restore or repair construction sites, active or closed mining sites, landfill caps, or other drastically disturbed land.
37. "Responsible official" means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official or any duly authorized agent.
38. "Runoff" means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
39. "Sand" means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.
40. "Sewage sludge":
 - (a) *Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.*
 - (b) *Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.*
 - (c) *Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.* A.R.S. § 49-255(6)
41. "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.
42. "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in biosolids.
43. "Store biosolids" or "storage of biosolids" means the temporary holding or placement of biosolids on land before land application.
44. "Surface disposal site" means an area of land that contains one or more active sewage sludge units.
45. "Ton" means a net weight of 2000 pounds and is known as a short ton.

46. "Total solids" means the biosolids material that remains when sewage sludge is dried at 103° C to 105° C.
47. "Treatment of biosolids" means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.
48. "Unstabilized solids" means the organic matter in biosolids that has not been treated or reduced through an aerobic or anaerobic process.
49. "Vectors" means rodents, flies, mosquitoes, or other organisms capable of transporting pathogens.
50. "Volatile solids" means the amount of total solids lost when biosolids are combusted at 550° C in the presence of excess air.
51. "Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

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**FIVE-YEAR REVIEW
A.A.C. TITLE 18, CHAPTER 13
DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT**

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OVERVIEW

18 A.A.C. 13 has 11 Articles and 80 Sections and applies to various categories of solid waste through the Arizona Department of Environmental Quality (ADEQ). Since the last five-year-review report was submitted in December 2014, ADEQ has not completed any regular rulemakings affecting this Chapter. However, three Articles with five Sections were allowed to expire under A.R.S. § 41-1056(J).

I. Article 2, Solid Waste Definitions; Exemptions

A. Information That Is Identical for All Sections in Article 2

1. General and Specific Statutes Authorizing the Rules: The rules in Article 2 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing these rules is A.R.S. § 49-701.01(C).

2. Objective and purpose: The purpose of this Article is to list the substances the Director exempts from the definition of solid waste found at A.R.S. § 49-701.01(A). The two rules in this Article were adopted as an exempt rulemakings as authorized in A.R.S. § 49-701.01(C), which allows any person to submit a petition to the Director to exempt a substance from the definition of solid waste. Under A.R.S. § 49-701.01(C), the petitioner must demonstrate to the director that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment.

3. Effectiveness of the rules in achieving their objective: The rules are effective.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rules in Article 2 are consistent with the rules and statutes of Arizona and the United States. See 40 CFR 501, State Sludge Management Program Regulations, and 40 CFR 503, Standards for the Use or Disposal of Sewage Sludge.

5. Status of Agency enforcement policy regarding the rules: All of the rules in Article 2 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: The rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption:

The rules in Article 2 did not require a cost benefit determination or an economic impact statement when promulgated because they were exempt from the requirements of Title 41, Chapter 6.

Article 2 contains an exemption from the definition of solid waste for biosolids applied according to state rules governing the land application of biosolids. This exemption avoids dual regulation of the land application of biosolids and therefore reduces unnecessary regulatory burdens. Article 2 also contains an exemption for small accidental releases of coal slurry from pipeline leaks. The impact of the exemptions in Article 2 is deregulatory, and continues to result in less regulatory cost. ADEQ believes that the benefits exceed the costs for these rules since they are deregulatory and there are no future ADEQ costs to maintaining the rules.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for either of the rules in Article 2.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted incorrect citations in R18-13-201 that it would address when the moratorium expired. The incorrect citations still exist and are discussed in R18-13-201, below.

11. Cost benefit determination; least burden and cost: The rules in Article 2 did not require a cost benefit determination or an economic impact statement when promulgated. ADEQ believes that the benefits exceed the costs for these rules since they are deregulatory and there are no future ADEQ costs to maintaining the rules. Much of the legwork and research for the threat determination was completed by the petitioners. In addition, once the director found that the substance is unlikely to cause or substantially contribute to a threat to the

public health or the environment, the cost to the public is by definition determined to be zero or negligible. The burden and cost to ADEQ for the determinations and rulemakings in this Article were the least necessary to determine that the substances were unlikely to pose a threat.

12. Stringency Compared to Corresponding Federal Law: Provisions of federal law apply to sludge from wastewater treatment facilities, known as biosolids. ADEQ's only solid waste rule dealing with biosolids is R18-13-201. R18-13-201 exempts certain biosolids from the definition of solid waste and refers to rules in 18 A.A.C. 9. Biosolids were regulated by Chapter 13, Article 15 as late as 2001, but those rules were recodified to Chapter 9, Article 10, where they are administered by ADEQ's Water Quality Division. This rule is no more stringent than corresponding federal law. See 40 CFR 501, State Sludge Management Program Regulations, and 40 CFR 503, Standards for the Use or Disposal of Sewage Sludge.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: ADEQ proposes to correct the citations in R18-13-201 in a regular rulemaking to be submitted to GRRC in February 2021.

B. Individual Section Review

R18-13-201. Land Application of Biosolids Exemption

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is A.R.S. § 49-701.01(C).

2. Objective of the rule: The rule exempts biosolids originating from domestic sewage from the definition of solid waste when the biosolids are applied according to state rules governing the land application of biosolids. The exemption was based on a 1997 petition from Pima County Wastewater Management Department and avoids unnecessary overlapping environmental regulation under water quality and waste statutory authority.

6. Clarity, conciseness, and understandability of the rule: The rule is generally clear, concise, and understandable. However, the rule contains citations to Chapter 13, Article 15

that are incorrect due to the recodification of Article 15, which is now found at 18 A.A.C. 9, Article 10. This recodification corresponded to a shift of programmatic responsibility for regulating the land application of biosolids from the Waste Programs Division to the Water Quality Division.

10. Completion of previous proposed courses of action: The approved 2014 report stated that there was no proposed course of action due to the rulemaking moratorium.

12. Stringency Compared to Corresponding Federal Law: Provisions of federal law apply to sludge from wastewater treatment facilities, known as biosolids. ADEQ's only solid waste rule dealing with biosolids is R18-13-201, which exempts it as a solid waste and refers to applicable rules in 18 A.A.C. 9. Biosolids were regulated by Chapter 13, Article 15 as late as 2001, but those rules were recodified to Chapter 9, Article 10, where they are administered by ADEQ's Water Quality Division under a biosolids program approved by EPA. There is no corresponding federal law for the exemption from a solid waste definition.

14. Proposed course of action: ADEQ plans to correct the citations by regular rulemaking and expects to submit the rule to GRRC in February 2021.

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is A.R.S. § 49-701.01(C).

2. Objective of the rule: The rule establishes an exemption from the definition of solid waste for certain accidental releases of coal slurry from pipeline leaks. Black Mesa Pipeline, Inc. petitioned the Department in 1999, to approve a statewide exemption for certain coal slurry discharges from pipelines. The Director determined that the discharges, under the conditions described in the rule, were unlikely to cause or substantially contribute to a threat to public health or the environment.

3. Effectiveness of the rule in achieving its objective: The pipeline for which this rule was requested was discontinued and removed in 2005 when the electric generating station for which it was built in 1970 (Mojave Generating Station in Laughlin, NV) was closed.

However, the right of way still exists and the pipeline was "removed" under rules that allow

some sections of the pipeline to remain. Although there are no other coal slurry pipelines in Arizona or in the United States, the rule is still effective for this pipeline.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption:

This rule was adopted by an exempt rulemaking and no economic impact statement was prepared for the rule. The rule is a slight economic incentive for the pipeline to be restored or for a future coal industry partner to operate a coal slurry pipeline.

14. Proposed course of action: None.

II. Article 3, Refuse and Other Objectionable Wastes

A. Information That Is Identical for All Sections in Article 3

1. General and Specific Statutes Authorizing the Rules: The rules in Article 3 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing the rules is A.R.S. § 49-761(I).

2. Objective and purpose: This Article was originally adopted in 1964 under A.R.S. § 36-136, a statutory provision that broadly identified the public health authority to be exercised by the director of the Arizona Department of Health Services. This authority and the rules were transferred to ADEQ in 1986. The Article was created to regulate management of solid waste from its point of generation to its ultimate disposal. All eleven Article 3 sections were adopted before ADEQ's creation and have not been changed since. All eleven sections could be updated and modernized, if still relevant, or possibly removed if no longer relevant. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual Section review, the rules in Article 3 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual Section review, the rules in Article 3 are consistent with the rules and statutes of

Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual Section review, the rules in Article 3 are currently enforced by the Department, and in some cases by counties through delegation agreements.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: See R18-13-308.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: Article 3, Refuse and Other Objectionable Wastes, dates back to 1964 and has not been changed since. It was transferred to ADEQ in 1987. It is probable that none of the rules in this Article had such a statement prepared for them when they were adopted. If such a statement was prepared, it is unavailable. ADEQ enforces Article 3 throughout the state directly with its own employees and through delegation agreements between ADEQ and 13 of Arizona's 15 counties.

The variance procedure written into the rule at R18-13-308 has addressed economic need and changing conditions. Since 2006, ADEQ has issued 20 frequency of collection variances under R18-13-308. In each case, ADEQ determines that the submitted plan will address environmental health goals, and the variance allows the collection agency and ultimately the local government and citizens to save money.

Other than a general need for modernization, ADEQ has not noted any regulatory gap in Article 3. When the rules are modernized, they will be clarified, and put in modern language, but ADEQ expects that there will be no significant economic impacts for the regulated community, and only a moderate one for ADEQ based on rulemaking activities. ADEQ believes the economic impacts of Article 3 today are no greater than those when the Article was created in relation to the day to day and month to month expenses at that time. Article 3 still provides for sanitary conditions at premises, business establishments and industries,

storage of refuse, collection of refuse including frequency of collection, notices to homeowners about requirements for storage and collection of refuse, and standards for waste collection vehicles that are not addressed by any other more specific statutes or rules. As mentioned previously, many of these Article 3 duties are delegated to counties, with standards for enforcement and enforcement personnel placed in the delegation agreements. The costs associated with these requirements have been absorbed year to year by persons who generate, store, collect, transport or otherwise handle solid waste. ADEQ believes that the benefits of these rules exceed the costs.

There may be opportunities discovered for reducing the burdens on regulated entities as the modernization rulemaking for Article 3 takes place. ADEQ cannot state at this time that the current Article 3 rules place the least burden on persons regulated by the rules necessary to achieve their objectives and those of A.R.S. § 49-761(I).

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 3.

10. Completion of previous proposed courses of action: The last approved five-year review report on this Article stated that there was “[n]o proposed course of action due to the rulemaking moratorium.”

11. Cost benefit determination; least burden and cost: The rules in Article 3 did not require this analysis or an economic impact statement when promulgated. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: Article 3 contains numerous requirements for such items as

ashes, large dead animals and manure from pens, stables and yards. These may have been issues as Arizona and Phoenix were entering the second half of the twentieth century but they are no longer as relevant in parts of the state. Manure from industrial farming such as concentrated animal feedlot operations is covered only minimally. Enforcement of many Article 3 provisions is done by Arizona counties who are acting under delegation agreements with ADEQ. As described below, the Article contains rules that would benefit from modernization and to the extent relevant, clarification. After an exemption from the rulemaking moratorium, ADEQ plans to schedule discussions with stakeholders and local authorities to determine what parts of Article 3 need to be retained as is, clarified, or deleted. Due to the age of these rules, ADEQ believes it should update these rules in a rulemaking separate from other Chapter 13 Articles. ADEQ will submit a request to the Governor for such a rulemaking in 2020 and a rule to GRRC in December, 2021.

C. Individual Section Review

R18-13-302. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).
2. Objective of the rule: The rule's objective is to provide definitions necessary for the administration of 18 A.A.C 13, Article 3.
3. Effectiveness of the rule in achieving the objective: The necessity for subdividing solid waste into various categories such as “garbage”, “refuse”, and “rubbish” should be reevaluated when this Article is updated.
6. Clarity, conciseness, and understandability of the rule: The definition of “approved” as “acceptable to the Department” causes other provisions in the Article to be vague. Consider deleting the definition and providing specificity as required in individual Sections. The same definition of “approved” was deleted by ADEQ from this Chapter’s Article 11 in 2003.
14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-303. Responsibility

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes responsibilities of owners, agents or occupants of premises for unsanitary or dangerous conditions related to onsite refuse or other objectionable waste.

3. Effectiveness of the rule in achieving the objective: This rule is only partially effective in achieving its objective because it needs to be clarified and modernized. It has been unchanged since at least 1980.

6. Clarity, conciseness, and understandability of the rule: Subsection (D) is not clear and understandable owing in part to the use of the undefined terms “dangerous” and “harmless”. Responsibility of the undefined “collection agency” for disposal of refuse accepted for collection is not covered directly.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-304. Inspection

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes authority to inspect all buildings or structures, processes, equipment or vehicles used for the storage, collection, transportation, disposal, or reclamation of refuse.

6. Clarity, conciseness, and understandability of the rule: The last “or” in the rule should probably be “of”.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-305. Collection Required

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes what refuse is required to be accepted and what may be accepted at the discretion of the collection agency.

6. Clarity, conciseness, and understandability of the rule: Where “refuse collection service is available” is not clear. Subsection (A) appears to be minimum standards for operating a public or private collection service in Arizona and those standards may no longer be appropriate for statewide application.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-306. Notices

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule requires that collection agencies notify their customers about the requirements governing the storage and collection of refuse.

6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-307. Storage

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the storage of refuse.

5. Status of Agency enforcement policy regarding the rules: R18-13-307(A) requires property owners to supply suitable containers for “refuse” or garbage. This is not enforced.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-308. Frequency of Collection

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the frequency of the collection of refuse and other objectionable wastes, and establishes conditions under which ADEQ may grant a variance from the twice weekly frequency requirement for the collection of garbage.

5. Status of Agency enforcement policy regarding the rules: ADEQ enforces this rule, with the exception of Maricopa and Pima counties, who are delegated the granting of refuse collection frequency variances for all commercial accounts and rural residential areas.

6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined. Subsection (A) implies the collection agency has “rules” setting the frequency of collection. The procedure for the variance involves the collection agency, the local health department, the Department and a submitted plan. The rule could be modernized and clarified.

7. Written criticisms of the rule received within the last five years: In response to a five year review survey for this Chapter that ADEQ emailed to 3,300+ solid waste stakeholders on November 13, 2019, ADEQ received a comment to change the default requirement for garbage collection in this rule from twice a week to once a week.

No other written criticisms were received.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-309. Place of Collection

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the placement of refuse on a property for collection.

6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined and is a confusing term. It is sometimes the local government in cooperation with the current “collection agency” that specifies the place of collection.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-310. Vehicles

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the construction, maintenance, and sanitary requirements of vehicles used for collection and transportation of garbage or refuse.

6. Clarity, conciseness, and understandability of the rule: It is sometimes the local government in cooperation with the current collection agency that sets standards for vehicles. Rule could clarify its applicability where local government has also acted.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-311. Disposal; General

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in

this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes general minimum requirements for disposal of refuse.

5. Status of Agency enforcement policy regarding the rules: Subsection (A) seems to prohibit disposal of refuse by any method not included in Article 3. Given the age of Article 3, ADEQ is not certain that this is being comprehensively enforced.

6. Clarity, conciseness, and understandability of the rule: The second sentence in subsection (A) is not clear. The reference to A.R.S. § 9-441 in subsection (C) is not clear because the statute no longer exists.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

R18-13-312. Methods of Disposal

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes requirements further regulating specific methods of disposal of refuse. The methods addressed include sanitary landfill, incineration, composting, garbage grinding, and manure disposal.

4. Consistency of the rule with state and federal statutes and rules: To the extent that this rule purports to apply to landfills, incinerators and composting facilities, it has been superseded by statutory provisions that now provide, in some detail, the manner in which ADEQ is to regulate "solid waste facilities." See A.R.S. § 49-761(A) through (H), (J) through (M); A.R.S. §§ 49-762, 49-762.01, 49-762.02, 49-762.03, 49-762.04, 49-762.05, 49-762.06, 49-762.07, and 49-762.08. ADEQ believes that A.R.S. § 49-761(I) may still authorize provisions relating to garbage grinding and manure disposal.

5. Status of Agency enforcement policy regarding the rules: ADEQ does not enforce the subsections on hog feeding or manure disposal.

6. Clarity, conciseness, and understandability of the rule: The reference to A.R.S. Title 24 in subsection (5)(c) is not clear since that Title has been repealed.

7. Written criticisms of the rule received within the last five years: In response to a five year review survey for this Chapter that ADEQ emailed to 3,300+ solid waste stakeholders on November 13-2019, ADEQ received a comment that it was not clear if industrial composting operations at concentrated animal feeding operations (CAFOs) are exempt from the requirements in R18-13-312(3).

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

III. Article 5, Requirements for Solid Waste Facilities Subject to Self-Certification

A. Individual Section Review

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

1. Statute(s) authorizing the rule: In addition to the general authority for this rule in A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A), the specific authority is at A.R.S. § 49-762.05.

2. Objective of the rule: The rule establishes a registration process for this category of solid waste facilities with timelines and fees.

3. Effectiveness of the rule in achieving its objective: The rule was created in 2012 to codify a registration process and establish a fee. It has resulted in fees proportionately related to inspection of self-certified facilities and administration of the self-certification and registration program.

4. Consistency of the rule with state and federal statutes and rules: The rule is consistent with state statutes and rules. No federal laws apply.

5. Status of Agency enforcement policy regarding the rule: The rule is enforced.

6. Clarity, conciseness, and understandability of the rule: The rule is clear, concise and understandable.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: There are 19 self-certification tire sites and a similar number of large transfer facilities in this category. ADEQ has determined that the fees collected are sufficient

for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by a legislative moratorium at A.R.S. § 49-762.05(H). See additional discussion in Appendix A.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in this rule are the least possible, while the rule meets the objectives and produces the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of registration and oversight of transfer facilities and tire sites. See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, but did not require issuance of a regulatory permit, license or agency authorization. By definition, these facilities do not need authorization, because they self-certify.

14. Proposed course of action: No change to the rule.

IV. Article 7, Solid Waste Facility Review Fees

A. Information That Is Identical for All Sections in Article 7

1. General and Specific Statutes Authorizing the Rules: The rules in Article 7 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A) and specifically by A.R.S. §§ 49-762.03(F) and 49-857(C).

2. Objective and purpose: The purpose of Article 7 is to establish fees and administrative mechanisms for collecting fees from applicants for solid waste facility plan approval. Owners and operators of solid waste land disposal facilities, which include non-municipal solid waste landfills, biosolids processing facilities, medical waste facilities, special waste facilities, municipal solid waste landfills, commercial or government-owned household waste composting facilities, and certain waste tire collection facilities are required to obtain facility plan approval from ADEQ under A.R.S. § 49-762. Under A.R.S. §§ 49-762.03(F) and 49-857(C), ADEQ is authorized to establish fees by rule, for the approval of the plan. Further information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: The rules in Article 7 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rules in Article 7 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: The rules in Article 7 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: If a rule in Article 7 has received written criticism in the last five years, the criticisms are noted in the individual section review.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: ADEQ has performed dozens of plan approvals over the last five years. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. See additional discussion in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 7.
10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted an issue in R18-13-703 that it would address when the moratorium expired. The issue with this Section still exists and is discussed below.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rule meets the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of recovering the costs of reviewing solid waste facility plans. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There are no federal laws corresponding to the rules in Article 7.
13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article do not require the issuance of a permit.
14. Proposed course of action: See R18-13-703.

B. Individual Section Review

R18-13-701. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762.03(F) and 49-857(C).
2. Objective of the rule: The rule's objective is to provide definitions necessary for the administration of the Article.

R18-13-702. Solid Waste Facility Plan Review Fees

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762.03(F), 49-762.06 and 49- 857(C).
2. Objective of the rule: The rule's objective is to provide plan review fee schedules and other provisions necessary for the administration and collection of plan review fees.
3. Effectiveness of the rule in achieving its objective: The rule was updated in 2012 to recover ADEQ's then current costs. ADEQ has studied revenues and expenditures under this rule to determine whether it has resulted in sufficient revenues to cover costs.
7. Written criticisms of the rule received in the last five years: None
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: ADEQ received a little over \$80,000 in fee revenue from this Section in FY 13 and in FY14. In FY 19, revenue from these activities was \$48,600. These revenues fluctuate based on who applies for plan approval in a given year. However, because the fees are per hour and based on ADEQ hours spent processing the plan approval, ADEQ has determined that the fees collected are currently sufficient for and proportionate to the resources needed for the duties related to these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-762.03(F)) See also Appendix A.
11. Cost benefit determination; least burden and cost: See Appendix A.
14. Proposed course of action: No change to the rule is necessary.

R18-13-703. Review of Bill

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-762.03(F) and A.R.S. § 49-857(C).
2. Objective of the rule: The rule's objective is to provide a process for informal review of a disputed bill for plan review fees.
4. Consistency of the rules with state and federal, statutes and rules: This Section contains procedural language and timelines for an informal review and final decision regarding a final bill “for plan review and issuance or denial of a solid waste facility plan approval”. The Section’s language directs the appeal of the Department’s final decision to statutes providing for judicial review of administrative actions and appears to bypass the Uniform Administrative Appeal Procedures in in Title 41, Chapter 6, Article 10. Subsection (B) should say the final decision is an appealable agency action and subject to review according to Title 41, Chapter 6, Article 10, Arizona Revised Statutes.
6. Clarity, conciseness, and understandability of the rule: In administering R18-13-703(B), the Department regards the Director's final decision on the correctness of a bill for plan review fees as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures. ADEQ believes that the current rule could be clarified by indicating in the rule that the final decision is an appealable agency action.
10. Completion of previous proposed courses of action: In the last five year report, ADEQ also stated that the rule could be clarified by indicating that the final decision in subsection (B) was an appealable agency action. Through an oversight, this change was not proposed in ADEQ’s 2012 rulemaking amending this section. After close of comment, the change was deemed insufficiently related to the rulemaking’s focus on fees to make without additional notice and comment.
14. Proposed course of action: ADEQ will submit a rule to GRRC correcting the appeal citation in subsection (B) in February 2021.

V. Article 8, General Permits

A. Information That Is Identical for All Sections in Article 8

1. General and Specific Statutes Authorizing the Rules: The rules in Article 8 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing rule is A.R.S. § 49-706.

2. Objective and purpose: Included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: Both rules in Article 8 are effective in achieving their individual objectives.
5. Status of Agency enforcement policy regarding the rules: The rules in Article 8 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: ADEQ believes that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: No comments were received for this Article.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: ADEQ has issued one general permit, which is in R18-13-802. There are currently eight mining landfills authorized to operate under this general permit. ADEQ has determined that the fees collected to date are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-706(B)) See additional discussion in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for either of the rules in Article 8.
10. Completion of previous proposed courses of action: There were no proposed courses of action.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of solid waste landfills at mining sites. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.
14. Proposed course of action: No proposed course of action for either rule in this Article.

B. Individual Section Review

R18-13-801. General Permit Fees

1. Statute(s) authorizing the rule: A.R.S. § 49-706

2. Objective of the rule: This rule set up fees for solid waste general permits before any were specifically identified in order to avoid any extra steps involved in fee approval each time a solid waste general permit is established.

3. Effectiveness of the rule in achieving the objective: The rule is effective and has established the fee for the general permit in R18-13-802.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: There are no federal rules applicable to landfill fees. This rule is consistent with A.R.S. §§ 41-1008 and 49-706.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The first general permit (R18-13-802) was effective on November 9, 2014. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-706(B)) See additional discussion in Appendix A.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits): This rule was adopted after July 29, 2010, but did not require issuance of a regulatory permit, license or agency authorization.

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

1. Statute(s) authorizing the rule: A.R.S. § 49-706

2. Objective of the rule: The rule establishes a solid waste general permit under A.R.S. § 49-706 for a class of solid waste land disposal facilities that would otherwise need a solid waste facility plan under A.R.S. § 49-762.

3. Effectiveness of the rule in achieving the objective: This rule created a general permit and has been effective for approximately five years. At the time of this report, ADEQ has received and reviewed eight Notices of Intent to operate under the general permit. Those eight facilities are still operating. ADEQ believes the rule has been effective.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The provisions of the general permit apply the solid waste standards in 40 CFR 257 and may not be more stringent. See A.R.S.

§49-761(C). They are thus equivalent to federal law.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: No revenues were received from mining landfills authorized to operate under this rule in FY 19. The fees for this general permit are initial fees with no recurring annual fees. The initial fees for the eight current mining landfills were collected before FY 19.

11. Cost benefit determination; least burden and cost: When ADEQ adopted this rule and created this general permit in 2014, it determined that the benefits exceeded the costs since the mining landfills otherwise needed the more expensive plan approval under A.R.S. 49-762, and they were a good candidate for a general permit. ADEQ determined that the general permit imposed the least burden necessary by working with regulated entities, including the Arizona Mining Association, to make sure that the general permit contained appropriate requirements, and in such a way to provide maximum clarity and flexibility. See “Advantages of this General Permit” at 40 A.A.R. 2680, and the economic impact summary at 40 A.A.R. 2681. Nothing has changed to alter these determinations.

12. Stringency Compared to Corresponding Federal Law: The provisions of the general permit apply the solid waste standards of 40 CFR 257 and may not be more stringent. See A.R.S. §49-761(C). They are thus equivalent to federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits): This rule was adopted after July 29, 2010, and establishes a general permit.

VI. Article 11, Collection, Transportation, and Disposal of Human Excreta

A. Information That Is Identical for All Sections in Article 11

1. General and Specific Statutes Authorizing the Rules: The rules in Article 11 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing these rules is A.R.S. §§ 49-104(B)(14) and 49-104(B)(17).

2. Objective and purpose: Article 11 establishes requirements for persons who own or operate a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other on-site wastewater treatment facility, privy, sewage vault, or chemical toilet. ADEQ’s licensing records indicate that there are

approximately 631 licensed septic haulers subject to the requirements of Article 11. Other than the establishment of a license fee in 2012, the rules were last amended substantively in 2003. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 11 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 11 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, the rules in Article 11 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See Appendix A and R18-13-1103.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 11.

10. Completion of previous proposed courses of action: In the last five-year review report there were no proposed courses of action for this Article.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of the collection, transportation, and disposal of human excreta. See R18-13-1103 and Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit,

License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) All of the rules in this Article were adopted before July 29, 2010 except for R18-13-1103, which was amended in 2012. A general permit would be technically infeasible for the licensing of septage hauling vehicles because the authorizing statute, A.R.S. § 49-104(B)(14), provides for the inspection of each vehicle. Whereas a general permit would list elements necessary and conditions prohibited for a vehicle transporting medical waste and allow the vehicle to be licensed upon the owner's statement that the vehicle qualified, the inspection by ADEQ personnel results in an approve or deny decision based on the presentation of that specific vehicle. Vehicle inspections require what is essentially an individual permit similar to a safety certificate on an elevator.

14. Proposed course of action: There are no proposed courses of action for this Article.

B. Individual Section Review

R18-13-1102. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule establishes the definitions necessary to administer A.R.S. § 49-104(B)(14) and Article 11.

R18-13-1103. General Requirements; License Fees

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified for this Article, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objectives of the rule: The rule establishes the general requirements for vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers. The rule establishes vehicle requirements for a vehicle owner, including the procedure for obtaining a license, the terms of the license, and details regarding payment of a licensing fee.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee for the license, which was previously free. In FY 19, total fees collected under this rule were approximately \$58,000. The rule is effective at supporting regulation of the collection, transportation, and disposal of human excreta.
5. Status of Agency enforcement policy regarding the rule: Thirteen of the fifteen Arizona

counties share enforcement of the rules for the inspection of septage hauling vehicles with the State through county delegation agreements. These counties perform their own vehicle inspections using the ADEQ rules. No problems with enforcement.

6. Clarity, conciseness, and understandability of the rule: Subsection (B) uses the terms “health hazard” and “environmental nuisance” which could be clarified to make the rule clearer. However, there have been no enforcement problems related to these terms and no complaints from the counties.

7. Written criticisms of the rule received in the last five years: None

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: Since establishing the database necessary for implementing these fees in November of 2014, the number of licensed septage hauler vehicles has changed from 542 to 631 at the end of FY 19. In the last five-year report, ADEQ anticipated that the fees collected would result in revenues lower than anticipated when compared to the time involved with the inspection of vehicles in some counties and the administration and oversight of the program. Fees collected by ADEQ for septage hauler vehicles totaled about \$58,000 in FY 19. In addition, some inspections are covered by counties with separate inspection fees. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. See A.R.S. § 49-104(B)(14); see also Appendix A.

In the last (2012) rulemaking, ADEQ agreed that most septage hauler vehicle owners are probably small businesses, but took issue with comments that the fees were “an unnecessary burden on a community already ravaged by the loss of jobs and homes” and “an insult to an already over taxed business community.” ADEQ cited a 2010 University of Arizona Cooperative Extension study indicating that the cost to have a tank pumped was \$150 to \$1000 and reasoned that the \$250 initial and \$75 annual fee was usually less than the fee charged to pump one tank. A 2018 update to the same study (AZ1159-2018) kept the cost for having a tank pumped at \$150 to \$1000. The ADEQ fees have remained the same as well. ADEQ is maintaining its determination that the fees will have limited to moderate impact on licensees and that the benefits of funding and having a statewide program exceed the costs.

11. Cost benefit determination; least burden and cost: In general, it is more efficient to delegate inspection and oversight of these vehicles to counties to minimize travel; either state inspectors traveling to a county that is not doing it (Yavapai) or for the vehicles and a driver to travel to Phoenix for the inspection. To ensure proper administration of this rule in all counties, State oversight is necessary. ADEQ believes that the fees it has established are the least necessary for this function and that the benefits of funding and having a statewide program exceed the costs. See also Appendix A.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits). This rule was amended in 2012. However, a general permit would not be technically feasible (see A.R.S. § 41-1037(B)(3)) for the licensing of septage hauling vehicles because the authorizing statute, A.R.S. § 49-104(B)(14), provides for the inspection of each vehicle. Individual vehicle inspections requires what is essentially an individual permit.

R18-13-1106. Inspection

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule clarifies ADEQ's authority to inspect vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers to assure compliance with the Article.
5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections in this Article is shared with 13 of the 15 counties. The purpose of this delegation is to recognize county inspections as valid for the purpose of issuance of ADEQ septic licenses, and to ensure that inspections of septic haulers are conducted at least annually.

R18-13-1112. Sanitary Requirements

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule establishes more detailed sanitary requirements for vehicles and related equipment and disposal methods for sewage or human excreta removed

from septic tanks and other containers.

3. Effectiveness of the rule in achieving its objective: The rule continues to effectively achieve its objective.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

R18-13-1116. Suspension and Revocation

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).

2. Objective of the rule: The rule establishes a process for suspending or revoking septage vehicle licenses.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

R18-13-1117. Reinstatement

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).

2. Objective of the rule: The rule establishes a process for ADEQ to reinstate a suspended or revoked license for a vehicle or related equipment used to handle sewage or human excreta removed from septic tanks and other containers.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

VII. Article 12, Waste Tires

A. Information That Is Identical for All Sections in Article 12

1. General and Specific Statutes Authorizing the Rules: The rules in Article 12 are authorized generally by A.R.S. §§ 41-1003, 49-705, and 49-761(A). The specific statutes authorizing the rules is A.R.S. §§ 44-1304(A), (B), (C) and (F), 44-1306(A), and 49-104(B)(17).

2. Objective and purpose: The purpose of this Article is to address situations related to the handling and disposal of waste tires: 1) the burial of mining waste tires, 2) the use of waste tires as solid waste landfill cover, and 3) registration and fees for facilities in possession of certain quantities of used tires or waste tires. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 12 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: ADEQ has determined that the rules in Article 12 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 12 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: If a rule in Article 12 has received written criticism in the last five years, it is noted in the individual section review.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See Appendix A.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 12.

10. Completion of previous proposed courses of action: ADEQ proposed no courses of action for this Article in the last five year review report.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of used and waste tires. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal

law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: None.

B. Individual Section Review

R18-13-1201. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes definitions necessary to administer A.R.S. §§ 44-1301 through 1307 and Article 12.

R18-13-1202. Burial of Mining Waste Tires

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306, and Laws 1992, Chap 300, § 17.

2. Objective of the rule: The rule requires a one-time notification to ADEQ prior to burial of mining waste tires. The rule also prescribes the circumstances under which the burial of mining waste tires may take place.

R18-13-1203. Cover Requirements

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes the cover requirements for mining waste tires that are buried.

R18-13-1204. Annual Report

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule requires that an operator of a mining facility file an annual report with the Department that provides information about each burial cell of mining waste tires that was established during the preceding year.

R18-13-1205. Burial Cell Closure Certification

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes a requirement that a mining facility operator file a certification with the Department within 30 days after placement of final cover on a mining waste tire burial cell.

R18-13-1206. Storage

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule prohibits a mining facility from storing more than 500 mining waste tires without first obtaining Department approval to operate as a waste tire collection facility.

R18-13-1207. Maintenance of Records

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes a requirement that an operator maintain records indicating how many mining waste tires are buried in each burial cell for three years.

R18-13-1208. Inspections

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-

1306.

2. Objective of the rule: The rule establishes authority for the Department to inspect mining facilities to determine compliance with Article 12.

R18-13-1210. Waste Tire Cover

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule requires that the use of waste tires as daily cover at a solid waste landfill is subject to the solid waste facility plan required under A.R.S. § 49-762 for that landfill. The rule further prohibits mining waste tires from being used as daily cover for more than two consecutive days.

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1303(B) and 44-1306.

2. Objective of the rule: The rule requires registration and basic operating procedures for new waste tire collection sites. It also defines terms used in the Section and establishes an initial (\$500) and an annual (\$75) registration fee.

3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee and has resulted in sufficient fees received to administer the tire site program.

8. Current economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact at the last rule adoption: ADEQ reported that it received \$13,800 and \$9,400 in fee revenue from R18-13-1211 in FYs 13 and 14 and the conclusion was that the revenues were sufficient to administer the tire programs. The revenue from this Section in FY 19 was \$5,000. At this time, ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 44-1303(B)) ADEQ may use funds from other areas to cover these inspections as allowed by law. See A.R.S. § 49-837(B)(6). See also Appendix A.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, and results in “issuance” of an agency authorization. The registration required by this rule before operation is an alternative type of authorization specifically authorized by state statute (A.R.S. § 44-1303(B)) but acts essentially as an authority to operate under a general permit.

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority identified for this Article, the specific statutory authority for this rule is at A.R.S. §§ 44-1304.01(A)(8) and 44-1306.

2. Objective of the rule: The rule requires registration and basic operating procedures for certain outdoor used tire sites. It also defines terms used in the Section and establishes an initial (\$500) and annual (\$75) fee for registration.

3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee and ADEQ is collecting those fees.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last five year review report, ADEQ reported that it received \$20,600 and \$6,600 in fee revenue from this Section in FY 13 and 14 and the conclusion was that the revenues were sufficient to administer the tire programs. In FY 19 the tire revenues received by ADEQ from this Section were approximately \$7,000. At this time, ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 44-1304.01(A)(8)) ADEQ may use funds from other areas to cover these inspections as allowed by law. See A.R.S. 49-837(B)(6). ADEQ is studying current projections of revenues and expenditures to determine if the amount received will be proportionate to its costs in the future. See also Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, and results in “issuance” of an agency authorization. The registration required by this rule before operation is an alternative type of authorization specifically authorized by state statute (A.R.S. § 44-1304.01) but acts essentially as an authority to operate under a general permit.

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 44-1306.

2. Objective of the rule: The rule ensures that tire sites that may be classified and required to pay a fee under more than one of three different rules, need only pay the highest fee. One site may otherwise be required to pay more than one fee under rules authorized by A.R.S. §§ 44-1303(B), 44-1304.01(A)(8) and 49-762.05(H).

3. Effectiveness of the rule in achieving the objective: This rule is effective in preventing duplicate fees. Nineteen self-certification tire facilities and 56 other tire sites ‘saved’ over \$50,000 in FY 13 and FY 14 by paying only a single fee.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, but does not require issuance of an agency permit, license, or authorization.

VIII. Article 13, Special Waste

A. Information That Is Identical for All Sections in Article 13

1. General and Specific Statutes Authorizing the Rules: The rules in Article 13 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statutes authorizing the rules are A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective and purpose: The purpose of this Article is to provide the regulatory framework for the handling of special waste, a sub-category of solid waste.

Special waste is defined by A.R.S. § 49-851 as "a solid waste..., other than a hazardous waste, that requires special handling and management to protect public health and the environment" and which is listed, either in A.R.S § 49- 852, or by ADEQ in rule pursuant to A.R.S. § 49-854. A.R.S. § 49-852 lists two special wastes: waste that contains petroleum contaminated soils (PCS), and waste from shredding motor vehicles. A.R.S. § 49-854 authorizes ADEQ to designate additional special wastes, but ADEQ currently has not done so. There are no special wastes other than the two designated by statute.

Special waste is currently regulated by two Articles in Chapter 13. Article 13 was the first, created in 1994, and covers manifesting for both of the special wastes and Best Management Practices (BMPs) and generator fees for shredder residue. The second, Article 16, provides BMPs and generator fees for PCS, and they are discussed with that Article. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 13 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 13 are consistent with the rules and statutes of Arizona and the United States.
5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 13 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: If a rule in Article 13 has received written criticism in the last five years, the criticisms are noted in the individual section review.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See the discussion under R18-13-1307 and in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 13.
10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted issues in three of the Sections that it would address when the moratorium expired. The issues with these three Sections still exist and are discussed in R18-13-1302, R18-13-1303 and R18-13-1307 below.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of a manifest system for both special wastes and the regulation and oversight of generators of shredder residue. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal

law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: See R18-13-1301, R18-13-1302, R18-13-1303, and R18-13-1304 below.

B. Individual Section Review

R18-13-1301. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified for this Article, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth definitions of terms used in Article 13.

6. Clarity, conciseness, and understandability of the rule: In the “special waste manifest” definition, the reference to “Exhibit A” should be to “Appendix B”.

14. Proposed course of action: ADEQ plans to amend the incorrect citation in this Section in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1302. Special Waste Generator Manifesting Requirements

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: Manifests are multi-copy tracking documents that accompany the special waste from generation to its final determination. Copies are sent to ADEQ and provide the agency with notice of the location, nature and quantity of special waste generated and its movement thereafter. The rule's objective is to establish special waste generator identification numbers and manifesting requirements for both special wastes.

6. Clarity, conciseness, and understandability of the rule: The reference in subsection (A) to “Exhibit B” should be to “Appendix A”.

14. Proposed course of action: ADEQ plans to amend language in subsection (A) in a

rulemaking to be submitted to GRRC in February 2021.

R18-13-1303. Special Waste Shipper Manifesting Requirements

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth special waste shipper and manifesting requirements for this Article and Article 16.

6. Clarity, conciseness, and understandability of the rule: In subsection (A), the reference to “Exhibit B” should be to “Appendix A” instead. In subsection (B), the obsolete reference to R18-8-302 should be replaced by a reference to R18-13-1302.

14. Proposed course of action: ADEQ plans to amend language in subsections (A) and (B) in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth manifesting requirements for special waste receiving facilities.

6. Clarity, conciseness, and understandability of the rule: In subsection (A), the reference to “Exhibit B” should be to “Appendix A” instead.

14. Proposed course of action: ADEQ plans to amend language in subsection (A) in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1305. Records

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth record retention requirements for special waste handlers.

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth best management practices, including sampling protocols and fees, for waste from shredding motor vehicles.

3. Effectiveness of the rule in achieving its objective: ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities.

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

Subsection (D) appears to prohibit shredder residue from being treated, recycled, sorted, stored or disposed at an out of state facility and is consistent with A.R.S. § 49-856(B)(3), but inconsistent with R18-13-1605(C) which appears to recognize that another special waste, petroleum contaminated soil, may be shipped to an out of state facility.

5. Status of agency enforcement policy regarding the rule: This Section is enforced. In the previous five year report, ADEQ mentioned potential ambiguities raised by the standard in subsection (C) prescribing a permeability coefficient for surfaces used by generators of motor vehicle shredder residue. No problems have been experienced.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last EIS, ADEQ reported that it was unclear whether the rule had resulted in sufficient and proportionate fees to administer the shredder residue part of the special waste program because revenue from special waste fees had fluctuated significantly. Combined special waste fee revenue (shredder residue and petroleum contaminated soil) were \$261,800 in FY 13 and \$65,500 in FY 14. In FY 2019, combined special waste fee revenue was \$363,610. ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-855(C)(2)) See also Appendix A.

14. Proposed course of action: No change to the rule.

Table A. Target Analyses and Sampling Frequency

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The Table A's objective is to list the constituents sought and the frequency of sampling when testing shredder residue piles as provided in R18-13-1307. Table A is referenced in R18-13-1307(A)(1)(a)(ii).

Exhibit 1. Selection of Sample Points, Shredder Waste Pile

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide a visual aid for the selection of sample points in a shredder residue pile as described in R18-13-1307.

Appendix A. Application for Arizona Special Waste Identification Number

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide the form for applying for the Arizona special waste identification number required by R18-13-1302.

Appendix B. Special Waste Manifest

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide a special waste manifest form.

IX. Article 14, Biohazardous Medical Waste and Discarded Drugs

A. Information That Is Identical for All Sections in Article 14

1. General and Specific Statutes Authorizing the Rules: The rules in Article 14 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing the rules is A.R.S. § 49-761(D).

2. Objective and purpose: The purpose of Article 14 is to regulate persons who generate, transport, treat or dispose biohazardous medical waste and discarded drugs. Biohazardous medical waste is defined as cultures and stocks, waste human blood and blood products,

pathological wastes, medical sharps, and research animal waste associated with treatment, diagnosis or immunization. Household generators of biohazardous medical waste are exempt. Article 14 was enacted new in 1999 and not amended since except for the creation of the fee in R18-13-1409. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 14 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual Section review, ADEQ has determined that the rules in Article 14 are consistent with the rules and statutes of Arizona and the United States. The following were used in determining consistency:

- a. Some ADHS rules in 9 A.A.C. require various entities to comply with 18 A.A.C. 13, Article 14.
- b. Other ADHS rules in 9 A.A.C. require “hospital policies and procedures” that cover: Disposing of biohazardous medical waste; R9-10-230. Infection Control; R9-10-915. Infection Control
- c. 29 CFR Part 1910.1030, (“Bloodborne pathogens”, OSHA); 49 CFR 173.197, (“Regulated medical waste”, Transportation, Hazardous Materials Regulations)
- d. 40 CFR 266.505 (prohibits sewerage of hazardous waste pharmaceuticals, current R18-13-1418 is not clearly consistent, needs to be amended)

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 14 are currently enforced by the Department, and in the case of Maricopa County, through a delegation agreement.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement (EIS) prepared at last rule adoption: See R18-13-1409 and Appendix A.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on this

state’s business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 14.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted an incorrect citation in R18-13-1409 but did not propose a course of action “due to the rulemaking moratorium.”

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of the regulation and oversight of biohazardous medical wastes and discarded drugs. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: The rules in this Article are not more stringent than corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010 except for R18-13-1409.

14. Proposed course of action: If there is a proposed course of action for a rule, it is stated in the review of that rule.

B. Individual Section Review

R18-13-1401. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objective of the rule: The rule defines terms used in Article 14.

6. Clarity, conciseness, and understandability of the rules: The definition of “medical sharps” contained in the definition of “biohazardous medical waste” is not clear when applied to the rule for medical sharps at R18-13-1419. ADEQ published a substantive policy statement in 2017 explaining ADEQ’s current interpretation of requirements for syringes without needles as biohazardous medical waste and medical sharps. See https://static.azdeq.gov/legal/subs_medical_sharps.pdf

The definition of biohazardous medical waste/human pathologic waste could be clarified to exclude fingernails, hair and teeth. The issue could also be addressed with a substantive policy statement.

R18-13-1402. Applicability

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to describe the extent to which the Article is applicable.

R18-13-1403. Exemptions; Partial Exemptions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to set forth exemptions and partial exemptions from this Article.

R18-13-1404. Transition and Compliance Dates

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to set forth transition provisions and compliance dates for the application of this Article.
3. Effectiveness of the rule in achieving its objective: Most of the subsections in this rule deal with events on or before or after “the effective date of this Article.” It is not certain whether any of these are still needed.
14. Proposed course of action. When ADEQ opens a rulemaking on this Article to be submitted to GRRC in February 2021, it will discuss with stakeholders whether some or all of this Section could be deleted.

R18-13-1405. Biohazardous Medical Waste Treated On Site

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule sets forth treatment standards and other requirements for generators of biohazardous medical waste who treat the waste on site.

4. Consistency of the rules with state and federal statutes and rules: Subsection (C)(4) appears to prohibit non-hazardous incinerator ash from being disposed at an out of state landfill. Although this is required by statute for special waste (see A.R.S. 49-856(B)(3)), this may be an unnecessary restriction on interstate commerce for this material. It could be reworded like R18-13-1605(C), so that only when it is being disposed in Arizona, it has to be in a Department approved facility.

14. Proposed course of action: ADEQ plans to propose amended language in subsection (C)(4) to remove an interstate commerce restriction in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761 (D).

2. Objective of the rule: The rule's objective is to set forth practices, including tracking document requirements, to be followed by generators of biohazardous medical waste when the waste is transported for treatment off site.

R18-13-1407. Packaging

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule specifies packaging requirements for generators who set out biohazardous medical waste for collection for off-site treatment or disposal.

R18-13-1408. Storage

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule sets forth storage practices required for generators of biohazardous medical waste in storage areas.

R18-13-1409. Transportation; Transporter License; Annual Fee

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objectives of the rule: The rule sets forth: 1) vehicle requirements and other procedures to be followed for the transportation of biohazardous medical waste, 2) the requirements for and procedure involved in obtaining a transporter license, and 3) the fees related to the license.

3. Effectiveness of the rule in achieving its objectives: The rule is effective in meeting the objectives above. The rule was amended in 2012 to establish licensing and vehicle inspection fees.

4. Consistency of the rules with state and federal statutes and rules: Subsections (G) and (H) contain procedural language and timelines for an informal review and final decision regarding a final bill “for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections”. The language incorrectly directs the appeal of the Department’s final decision here to a statute providing for judicial review of final agency orders. The rule should say the final decision is an appealable agency action and subject to review according to Title 41, Chapter 6, Article 10.

Subsection (M)(3) appears to prohibit biohazardous medical wastes from being delivered to an out of state facility by limiting options to “Department-approved” facilities and is inconsistent with R18-13-1605(C) which allows a special waste, PCS, to be shipped to an out of state facility.

5. Status of Agency enforcement policy regarding the rules: ADEQ is not enforcing the \$750 licensing year fee for a renewal as referenced in subsection (D)(3)(b).

6. Clarity, conciseness, and understandability of the rule: The Department believes that the rule is clear, concise and understandable except as noted under consistency above.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last EIS, ADEQ noted that the \$22,800 received in FY 14 from

this rule appeared less than proportionate to the resources needed for regulation. In FY 19, ADEQ received \$25,270 from this rule. ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these vehicles and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 49-761(D)(2) See also Appendix A.

10. Completion of previous proposed courses of action. In the 2014 five-year review report for this Section, ADEQ noted that subsection (H) incorrectly specified that the Director's final decision on a billing dispute was subject to appeal pursuant to A.R.S. § 49-769. There was also a second inconsistency issue related to shipment to out-of-state facilities. ADEQ did not propose a course of action due to the rulemaking moratorium. See the current description of consistency issues and proposed courses of action in items 4 and 14 of this Section.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was amended after July 29, 2010, and requires issuance of an agency authorization which is not a general permit. In the rule, a transporter can receive a license after 1) submitting information on a form approved by the Department, and 2) its vehicle(s) pass(es) a Department inspection. The Department believes that it would not be technically feasible to issue authority to operate to a medical waste transporter without an individual inspection of each vehicle and still meet its requirement to protect public health and the environment.

14. Proposed course of action: ADEQ intends to correct the citation in subsection (H), and clarify the other issue discussed under consistency in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule sets forth requirements, including facility plan approval, for persons who store, transfer, treat, or dispose of biohazardous medical waste.

R18-13-1411. Storage and Transfer Facilities; Design and Operation

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule prescribes design and operation standards for storage and transfer facilities.

R18-13-1412. Treatment Facilities; Design and Operation

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, specific statutory authority for this rule exists at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule prescribes design and operation standards for treatment facilities.

3. Effectiveness of the rule in achieving its objective: As stated in the previous report, this rule does not include a requirement that a treatment facility be kept clean and have a cleaning schedule in place. Compare R18-13-1411(8). This basic requirement appears to have been overlooked in the initial rulemaking. Aside from this omission, the rule is effective in meeting its objective.

10. Completion of previous proposed course of action: ADEQ has not opened this rule to add a “clean facility” requirement as discussed under “Effectiveness” above.

14. Proposed course of action: Propose a “clean facility” requirement in a rule that ADEQ will submit to GRRC in February 2021.

R18-13-1413. Changes to Approved Medical Waste Facility Plans

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule sets requirements to be met in the event that a treatment facility owner or operator intends to make one of four categories of change to an approved medical waste facility plan.

R18-13-1414. Alternative Medical Waste Treatment Methods; Registration and Equipment Specifications

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objective of the rule: The rule specifies registration requirements for manufacturers of alternative medical waste treatment methods who wish to sell their methods to potential treatment facilities in Arizona. As of July, 2018, eleven of these methods had been registered, with three of the eleven having expired.

R18-13-1415. Treatment Standards; Quantification of Microbial Inactivation and Efficacy Testing Protocols

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule prescribes treatment standards to be achieved by alternative medical waste treatment methods.

R18-13-1416. Recycled Materials

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule explains how generators of biohazardous medical waste may recycle portions of the waste.

R18-13-1417. Disposal Facilities; Operation

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), and 49-762.

2. Objective of the rule: The rule prescribes design and operational standards for municipal solid waste landfills that accept untreated medical waste.

6. Clarity, conciseness, and understandability of the rule: The rule’s title is just “operation”, but the text of the rule speaks of complying with “design and operational requirements.”

14. Proposed course of action. When ADEQ opens a rulemaking on this Article to be submitted to GRRC in February 2021, it will discuss with stakeholders whether this Section covers both design and operation.

R18-13-1418. Discarded Drugs

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule prescribes what a generator can do with discarded drugs.
4. Consistency of the rules with state and federal statutes and rules: Subsection (B), permitting a generator to flush discarded drugs down a sanitary sewer “if allowed by the wastewater treatment authority”, is consistent with a recent federal rule which contains a “sewering ban” on hazardous waste pharmaceuticals. See 40 CFR 266.505, prohibiting healthcare facilities and others “from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works.” (effective August 21, 2019) Subsection (B) is consistent only because “discarded drug” is defined in R18-13-1401 to not include hazardous waste. ADEQ believes this Section needs clarification, see below.
6. Clarity, conciseness, and understandability of the rule: Subsection (B) needs to be rewritten to more thoroughly explain what is legal in light of the new federal rule prohibiting sewerage of hazardous waste pharmaceuticals.
14. Proposed course of action: ADEQ plans to propose a new subsection (B) that will be consistent with the new federal pharmaceuticals rule and clarify whether discarded drugs can be flushed down the drain. The rulemaking should be submitted to GRRC in February 2021. In the meantime, ADEQ has begun an outreach strategy to let generators know of the federal sewerage ban.

R18-13-1419. Medical Sharps

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule sets forth requirements for the handling and treatment of medical sharps.
6. Clarity, conciseness, and understandability of the rule: ADEQ published a substantive policy statement in 2017 explaining ADEQ’s current interpretation of requirements for syringes without needles as biohazardous medical waste and medical sharps.

R18-13-1420. Additional Handling Requirements for Certain Wastes

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule prescribes additional requirements for handling and treating certain biohazardous medical wastes.
4. Consistency of the rules with state and federal statutes and rules: Subsection (A)(3)(b)(i) appears to prohibit certain wastes from being disposed in an out of state landfill and is inconsistent with R18-13-1605(C) which appears to allow a special waste, PCS, to be shipped to an out of state facility.
14. Proposed course of action. Clarify subsection (A)(3)(b)(i) in a rulemaking to be sent to GRRC in February 2021.

X. Article 16, Best Management Practices for Petroleum Contaminated Soil

A. Information That Is Identical for All Sections in Article 16

1. General and Specific Statutes Authorizing the Rules: The rules in Article 16 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective and purpose: Article 16 provides best management practices and other procedures for handling petroleum contaminated soils (PCS), which is designated by statute as a special waste. As noted above for Article 13, special wastes are currently regulated by two Articles in this Chapter. Article 13 regulates registration and manifesting for both PCS and shredder residue, and provides best management practices (BMPs) for generators of shredder residue. Article 16 provides fees and BMPs for PCS only. More information is included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 16 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the

Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 16 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, the rules in Article 16 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years: None.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: This comparison is presented for all Chapter 13 Articles in Appendix A, and in the case of R18-13-1606, in the individual section analysis.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 16.

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

11. Cost benefit determination; least burden and cost: Except for the creation of a fee in R18-13-1606, the rules in Article 16 were last amended in 1995 and did not require this analysis or an economic impact statement when promulgated. As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of generators of petroleum contaminated soil. See R18-13-1606 and Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: If there is a proposed course of action for a rule, it is stated in

the review of that rule.

B. Individual Section Review

R18-13-1601. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule defines terms used in Article 16.

4. Consistency of the rules with state and federal statutes and rules: Several definitions in this section need to be aligned with the newer definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3). The discrepancy between the current statutory definition and the definitions in rule created confusion for those regulated by this Article, with the potential for unnecessary analyses being performed. ADEQ issued a position letter in 1998 and a substantive policy statement in 2008 that helped minimize the confusion.

6. Clarity, conciseness, and understandability of the rules: Although this rule's definition of PCS is not consistent with the statutory definition in terms of contaminants, the statute leaves unaddressed whether the residential or nonresidential SRLs are to be used in determining what is PCS. By addressing this issue in a 1998 position letter and a 2008 policy, ADEQ has minimized the confusion regarding what is PCS.

14. Proposed course of action: ADEQ will submit a rulemaking to GRRC clarifying these consistency and clarity issues in February 2021.

R18-13-1602. Applicability

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to explain the applicability of the Article.

R18-13-1603. Exemptions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851

through 49-868.

2. Objective of the rule: The rule's objective is to set forth exemptions pertinent to this Article.

4. Consistency of the rules with state and federal statutes and rules: The small quantity generator exemption formula in R18-13-1603(E) is inconsistent with the definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3).

6. Clarity, conciseness, and understandability of the rules: Subsection (E) is not clear because the statutory definition of PCS in A.R.S. § 49-851(A)(3) does not use total petroleum hydrocarbons (TPH).

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

14. Proposed course of action: Fix the issues related to subsection (E) in a rulemaking submitted to GRRC in February of 2021.

R18-13-1604. Waste Determination

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth procedures and requirements for determining the regulatory status of excavated soil contaminated with petroleum.

4. Consistency of the rules with state and federal statutes and rules: Language in this section, especially subsection (C), needs to be aligned with the definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3). The discrepancy between the applicable statutory definition and the language in this section may create confusion for those regulated by this Article. ADEQ has issued a position letter and a substantive policy statement to help minimize confusion.

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

14. Proposed course of action: Fix the issues related to this Section in a rulemaking submitted to GRRC in February of 2021.

R18-13-1605. Transportation

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule's objective is to set forth the requirements applicable to transportation of PCS.
4. Consistency of the rules with state and federal statutes and rules: Subsection (C) appears to allow a special waste shipper to transport PCS to a special waste receiving facility outside of Arizona and is inconsistent with A.R.S. § 49-856(B)(3) which states that “[a] person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director.” ADEQ does not propose to change the rule since it would not further an important state interest to prohibit PCS from being transported out of state.
14. Proposed course of action: No proposed course of action.

R18-13-1606. Fees

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, 49-855(C)(2) and 49-863.
2. Objective of the rule: The rule's objective is to set forth:
 - a) A per ton fee that a generator pays for PCS received in this state, and.
 - b) A maximum fee per generator site per year.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to update fee amounts. The new amounts have resulted in sufficient and proportionate fees for the administration of the PCS portion of the special waste program.
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In 2012, ADEQ increased the fee it collects under this Section from \$2.00 per ton to \$4.50 per ton. In the last EIS, ADEQ reported that it was unclear whether the rule had resulted in sufficient and proportionate fees to administer the petroleum contaminated soil part of the special waste program because revenue from special waste fees had fluctuated significantly. Combined special waste fee revenue (shredder residue and petroleum contaminated soil) were \$261,800 in FY 13 and \$65,500 in FY 14. In FY 2019,

special waste fee revenue was \$363,610. ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-855(C)(2)) See also Appendix A.

R18-13-1607. Facility Approval; Application

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule's objective is to set forth solid waste facility plan application and approval requirements for PCS treatment, storage and disposal facilities.
6. Clarity, conciseness, and understandability of the rules: Subsection (A) uses the word “only and appears to prohibit disposal at a facility out of state. It is not clear if it prohibits disposal of PCS at an out of state facility not approved by ADEQ.
14. Proposed course of action: Clarify subsection (A) to avoid seeming prohibition on out of state activities in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1608. General Design and Performance Standards

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth general design and performance standards for facilities that treat, store or dispose of PCS.
5. Status of agency enforcement policy regarding the rules: This Section is enforced. In the previous report, ADEQ mentioned enforcement difficulties with this standard. ADEQ no longer feels there is a problem. The standard itself could be relabeled a “permeability coefficient” which is the term used for the same standard in R18-13-1307(C).
10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.
14. Proposed course of action: None.

R18-13-1609. Treatment Facility

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth specific requirements for PCS treatment facilities in addition to the general requirements in R18-13-1608.

R18-13-1610. Temporary Treatment Facility

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, 49-762.03, and 49-762.04.

2. Objective of the rule: The rule sets forth requirements for temporary PCS treatment facilities.

6. Clarity, conciseness, and understandability of the rule: Subsections (B)(3) and (F) contains references to statutes that have been amended. The language in the original citations is now located at A.R.S. § 49-762.03(C) and A.R.S. § 49-762.04(A)(2).

14. Proposed course of action: Fix the issues related to this Section in a rulemaking submitted to GRRC in February of 2021.

R18-13-1611. Storage Facility

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth specific requirements for PCS storage facilities in addition to the general requirements in R18-13-1608.

R18-13-1612. Accumulation Sites

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762; and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth requirements for PCS accumulation sites.

R18-13-1613. Disposal

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth specific requirements for PCS disposal facilities in addition to the general requirements in R18-13-1608.
5. Status of agency enforcement policy regarding the rules: This Section is enforced. In the previous report, ADEQ mentioned enforcement difficulties with the standard in subsection (B). ADEQ no longer feels there is a problem. The standard itself could be relabeled a “permeability coefficient” which is the term used for the same standard in R18-13-1307(C).
14. Proposed course of action: Change “hydraulic conductivity” to “permeability coefficient” in a rulemaking to be submitted to GRRC in February 2021.

R18-13-1614. Records

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth requirements for records retention by owners of PCS facilities.

XI. Article 21, Municipal Solid Waste Landfills

A. Information That Is Identical for All Sections in Article 21

1. General and Specific Statutes Authorizing the Rules: The rules in Article 21 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statute authorizing the rule is A.R.S. § 49-747.
2. Objective and purpose: The purpose of Article 21 is to specify amounts and procedures related to annual registration fees for municipal solid waste landfills. More information is included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: The rules in Article 21 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: There are no federal rules related to

landfill registration fees.

5. Status of Agency enforcement policy regarding the rules: The rules in Article 21 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: The rules in Article 21 are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: At the last adoption, in 2012, ADEQ noted that the fees for landfills owned by counties and cities had recently varied year to year due to legislative adjustments. In the past five years the fees have remained unchanged and provide landfill owners with a degree of certainty.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 21.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted that its newly deployed Revenue and Invoicing Collections System (RICS) would need to be synchronized with this Article. RICS adapted well to these fees and there has been no change to the rules.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules were balanced against the requirement to create a fee-based revenue system while setting fees sufficient for and proportionate to the resources needed for regulation of the other types of solid waste facilities. The rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of landfill registration and a fee-based solid waste revenue system. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article requiring registration were adopted before July 29, 2010. In addition, this registration, rather than a general permit, is specifically authorized by A.R.S. § 49-747.

14. Proposed course of action: None.

B. Individual Section Review

R18-13-2101. Definitions

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to define the terms used in this Article.

R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to list the annual registration fees for existing municipal solid waste landfills of different sizes and types.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish these registration fees in rule. (They were formerly in statute.) The fees resulted in about \$300,000 in FY 13 and FY 14. In FY 19 the amount was \$358,000. The rule is effective.
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: As anticipated in the last EIS for this rule, the registration fees received under this Section, along with the landfill disposal fees under A.R.S. § 49-836 are major contributors to the solid waste program. At the last adoption, ADEQ anticipated modest decreases in landfill and disposal fees due to recycling and other strategies for reducing waste. Given the recent market changes which have set off a nationwide reduction in recycling, ADEQ believes the landfill disposal and registration fees will increase moderately from year to year and will continue to support the bulk of Solid Waste Program activities.

R18-13-2103. Annual Landfill Registration: Due Date and Fees

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to clarify the obligations of new landfill operators to pay the annual landfill registration fees.
14. Proposed course of action: None.

APPENDIX A

The Estimated Economic, Small Business and Consumer Impact of ADEQ's Solid Waste Rules as Compared To the Economic, Small Business and Consumer Impact Statement (EIS) Prepared on the Last Making of the Rules

This Appendix compares the current economic impacts of certain rules in this Article with those noted in the 2012 solid waste fee rulemaking. It also addresses relative costs and benefits and the issue of least burden possible given the rules' objectives for the 11 Articles that are part of this 5-year-review report.

In 2018, more than 7.2 million tons of waste was disposed in Arizona's 69 solid waste landfills (including two on Indian lands). In addition to those solid waste landfills, the Solid Waste Program regulates over 130 transfer stations, 130 tire collection sites, 36 state registered medical waste transporters, five medical waste treatment facilities, one approved medical waste disposal facility, two medical waste storage and transfer, seven facilities that have registered with alternative medical waste treatment technologies, 28 special waste transporters, and more than 250 closed solid waste facilities. More details can be found at <http://www.azdeq.gov/solidwaste>

For oversight and regulation of these facilities, ADEQ has limited staff. At the time of the 2012 solid waste fee rulemaking, the Solid Waste Program was operating with two plan reviewers and four inspectors, with three inspector vacancies. It is currently funded for three plan reviewers and six inspectors. ADEQ's believes that this is the minimum necessary staffing level for this program. In terms of overall staffing, the fees established in the 2012 rulemaking successfully implemented the statutory objectives of self-sufficiency and replacement of the General Fund subsidy, but left little room for turnover and other disruptions.

The new or increased solid waste fees in 2012 were established for self-certifying solid waste facilities (R18-13-501), solid waste general permits (R18-13-801), septage hauler vehicles (R18-13-1103), waste tire sites (R18-13-1211 and R18-13-1212), generators of auto shredder residue (R18-13-1307), biohazardous medical waste transporters (R18-13-1409), generators of petroleum contaminated soil (R18-13-1606), and landfill registrations (R18-13-2102). The

hourly rate for processing solid waste facility plans was increased in R18-13-702 from \$58.81 to \$122 per hour. In addition, Initial and Maximum fees for solid waste facility plans also increased. The economic impact statement that accompanied these rules covered nine of the current eleven Articles in Chapter 13 (5, 7, 8, 11, 12, 13, 14, 16, and 21.) At the time of the last five-year-review, the fees had not been in place long enough to determine if the objectives sought in the rulemaking and the goal of self-sufficiency were met. The results after 7 years of those fees are clearer.

In 2011, as directed by the legislature in HB 2705 (currently in A.R.S. § 49-104(B)(17)), all of these fees were to be based on “the direct and indirect costs of the Department’s relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing solid waste management licenses and permits and enforcing the requirements of the applicable regulatory program.” This was one criteria for how these fees were established.

In addition, HB 2705 set out an additional requirement: the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees.” At the time of the 2012 rulemaking, ADEQ interpreted “fairly assessed” to mean that the amount of fees collected from any class of solid waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class. (18 A.A.R. 1219)

Least Burden Possible: A relatively small share of FY 19 Solid Waste Program fees (\$200,000 from fees in Articles 5, 7, 8, 11, 12, and 14) are collected directly from smaller entities while a large share (\$2,800,000 from Article 21 landfill registration fees and A.R.S. § 49-836 landfill disposal fees) come from fees that are charged back to the population in general. Since the legislature requires all of the fees to be both “fairly assessed” and based on “[t]he direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses”, it is not possible or fair to reduce the small entities’ share to less than the amount related to those duties. For example, ADEQ may not legally reduce the burden for small entities by increasing the landfill fees by a small percentage if the small entity fees would not be based on the costs of

issuing licenses. ADEQ believes the fees in the Articles that set fees for both small entities and landfills represent the least burden possible.

Landfill disposal fees, authorized under A.R.S. § 49-836, provide the largest share of Solid Waste Program funding, but the 2012 fees filled the gap created by removing the General Funds contribution. Landfill disposal fees are deposited in the Recycling Fund (A.R.S § 49-837), not the Solid Waste Fee fund (A.R.S § 49-881) but may be used for the Solid Waste Program. Recycling monies are regularly used to fund Solid Waste Program activities. Further information on the revenues from each fee in this Chapter is set out below. It should be noted that each fee in this Chapter is frozen by legislative moratorium. More information is in the individual section analysis.

Article 5. Revenues received under this Article in FY 19 totaled \$33,000. This amount was related to the registration of transfer stations, certain waste tire collection sites, and other miscellaneous solid waste facilities. The information that comes with the funds is as important as the funds, and assists the department in tracking various streams of solid waste in the state. The fees were based on the costs related to the issuance of the registrations and enforcement for this class of facilities and continue to be the least possible to achieve the objectives of fairness and proportionality to the Department's duties

Article 7. Article 7 fees are hourly and originate from reviewing new and modified facility plans. These fees totaled \$48,600 in FY 19. Since the fees are based on review costs related to each hour spent reviewing, ADEQ believes they are fairly assessed and represent the least burden possible.

Article 8. Only one general permit has been issued by ADEQ under this Article. It is a Disposal permit for mining landfills. Eight facilities have been authorized to operate under this general permit but there is only an initial fee and no annual fee. No new facilities were authorized to operate and no initial fees were received in FY 19 under this Article. ADEQ worked with stakeholders as these fees were set and still believes that they are the least burdensome possible to maintain fairness and relationship to ADEQ duties.

Article 11. ADEQ received \$58,000 in FY 2019 under this Article for 631 vehicles. This was about \$92 per vehicle. The amount is sufficient for a partial FTE and is intended to cover

administration of the program, which includes maintenance of the ADEQ database, administration and periodic negotiation and renewal of county delegation agreements, and investigation of occasional complaints. Since FY 2019, it has also covered ADEQ inspections of septage vehicles in Yavapai County because Yavapai County declined to take delegation of the septage vehicle program. In normal years, the fees are the least burdensome to achieve the objective, but should one or more counties continue to decline delegation, ADEQ may need to reevaluate the administration and/or funding for this Article.

Article 12. In the last five year review report, ADEQ noted the new fee revenue it received from waste and used tire sources was sufficient to administer those programs. In FY 19, tire revenues received by ADEQ were approximately \$5,000 and \$7,000. These fees barely cover the activities of the inspectors related to the approximately 130 tire collection sites. ADEQ may use funds from other areas to help cover these inspections as allowed by law. See A.R.S. 49-837(B)(6).

Article 14. In the 2012 amendment to this rule, ADEQ was unable to determine how many previously registered medical waste transporters were still actually operating because there was only a one-time registration required and the registration and vehicle inspection had been free. Once fees began to be charged for the license and for inspection of transporter vehicles, about one third of previously registered transporters did not obtain the new license. Unverified numbers for Fiscal Years 13 and 14 indicated that fee revenue from this Section was significantly less than estimated in the 2012 EIS for this rule. ADEQ now has a database showing which transporters and vehicles are actually operating. In FY2014, ADEQ received \$22,800 from combined inspection and license fees. At the time of this report, there were 43 medical waste transporters operating. In FY2019, ADEQ received approximately \$37,500 in combined license and inspection fees from medical waste transporters.

Article 13 and Article 16. These Articles established fees for generators of the two types of special waste, auto shredder residue and petroleum contaminated soils, respectively. As noted previously, the revenues received from these fees can fluctuate considerably from year to year. When the fees were established in 2012, ADEQ determined that the fees were fairly assessed and in an amount necessary to maintain effective and adequate special waste regulation. At the present time, in light of the fluctuation noted, ADEQ has no reason to change that determination.

Article 21. The rules were amended in 2012 to establish new registration fees in rule. They were formerly in statute. The fees resulted in about \$300,000 in FY 13 and FY 14. In FY 19 the amount was \$358,000. As anticipated in the last EIS for this rule, the registration fees received under this Section, along with the landfill disposal fees under A.R.S. § 49-836 are major contributors to the Solid Waste Program. In the last five-year report, ADEQ anticipated modest decreases in landfill registration fees and disposal fees due to recycling and other strategies for reducing waste. Given the recent market changes that have set off a nationwide reduction in recycling, ADEQ believes the landfill disposal and registration fees will increase moderately from year to year and will continue to support the bulk of Solid Waste Program activities.

Chapter 13 Cost/Benefit. Given that the fees and other burdens are the least possible for all but Article 3, and the rules meets the objectives and produce the benefits set by the authorizing legislation, ADEQ continues to believe that the costs are exceeded by the benefits of the very basic protection of human health and the environment contained in Chapter 13.

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Table of proposed courses of action for 18 A.A.C 13

R18-13-201	Update citations	February 2021
18 A.A.C. 13, Article 3	Update Article	December 2021
R18-13-703(B)	Correct appeal citation	February 2021
R18-13-1301, 1302, 1303, 1304	Fix incorrect references	February 2021
R18-13-1401	Substantive policy statement to clarify biohazardous medical waste excludes hair, fingernails and teeth	NA
R18-13-1405(C)(4), 1409(M)(3), 1420(A)(3)(b)(i)	Clarify apparent prohibition on shipment of medical waste out of state	February 2021
R18-13-1409(H)	Correct appeal citation	February 2021
R18-13-1412	Add clean facility requirement	February 2021
R18-13-1417	Coordinate title and text	February 2021
R18-13-1418	Clarify subsection (B) for consistency with federal rule	February 2021
R18-13-1601, 1603, 1604	Correct issues related to definition of PCS	February 2021
R18-13-1607(A)	Clarify in state vs out of state	February 2021
R18-13-1608, 1610, 1613	Correct citations, labeling of standard	February 2021

BOARD OF TECHNICAL REGISTRATION
Title 4, Chapter 30, Board of Technical Registration

Amend: R4-30-106, R4-30-247



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 11, 2020

SUBJECT: BOARD OF TECHNICAL REGISTRATION
Title 4, Chapter 30, Board of Technical Registration

Amend: R4-30-106, R4-30-247

Summary:

This regular rulemaking from Arizona Board of Technical Registration (Board) was previously submitted to Council staff in February 2020 seeking to amend two rules in Title 4, Chapter 30, Articles 1 and 2. At that time, the Board sought to amend R4-30-106 to remove the Board's ability to accept cash as payment for fees from registrants. The Board indicated that it had experienced one case of theft of cash receipts by its staff and the rulemaking was an attempt to prevent theft of cash in the future. Also, the Board sought to amend R4-30-247(E) to clarify that the statutory requirement for a home inspector to maintain financial assurance under A.R.S. § 32-122.02(B) and (C) cannot be avoided by placing the home inspector certification on inactive status. Specifically, the Board indicated it sought to prevent home inspectors from circumventing the requirement to provide proof of financial assurance at the time of their annual certification renewal per R4-30-247(E) by placing their license on inactive status.

In reviewing the original February 2020 rulemaking package, Council staff indicated several concerns with the proposed amendments to R4-30-106 and R4-30-247. First, Council staff voiced concerns regarding whether limiting acceptable forms of payment for fees in the rule created an unnecessary burden on stakeholders, given the stated justification of preventing cash

theft from within the agency. Specifically, Council staff questioned whether “the probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective,” pursuant to A.R.S. § 41-1052(D)(3). Similarly, Council staff raised concerns regarding whether requiring home inspectors with certifications on inactive status, which includes those who are retired pursuant to A.R.S. § 32-127(E), to maintain financial assurance created a similarly unnecessary burden pursuant to A.R.S. § 41-1052(D)(3).

In response to these inquiries by Council staff, the Board withdrew the rulemaking package from consideration and filed a Notice of Supplemental Proposed Rulemaking on July 17, 2020 which included modified amendment language that is included in the rulemaking package currently before the Council for consideration.

In the current rulemaking, the Board still seeks to amend R6-30-106 and R6-30-247. Specifically, the Board seeks to amend R4-30-106(B) to remove references to all forms of payment the Board will accept as payment of fees. The Board indicates it has experienced circumstances in which not all forms of payment established in rule could actually be accepted and processed. In addition, as before, the Board states it has been the victim of theft of cash by an employee during a period of time when appropriate controls for cash acceptance were lacking. As such, the Board states it intends to amend R4-30-106(B) to not define types of payment accepted in the rule to allow the Board the ability to adapt to circumstances that may be outside the Board’s control. Despite the modifications to the amendment language, and discussed in more detail below, Council staff still maintains concerns that the proposed amendment unnecessarily shifts burdens to stakeholders if the Board still intends to not accept cash for payment of fees as a means to address internal agency accounting concerns and questions whether the Board considered less burdensome alternatives.

The Board also seeks to amend R4-30-247(C)(5) to comply with the statutory amendment to A.R.S. § 32-122.02(A)(5) which requires home inspector applicants to submit evidence of a valid fingerprint clearance card issued pursuant to A.R.S. §§ 41-1758 through 1758.08.

Finally, the Board is seeking to amend R4-30-247 to clarify the statutory requirement for a home inspector to maintain financial assurance under A.R.S. § 32-122.02(B) and (C) when a home inspector places their certification on inactive status pursuant to A.R.S. § 32-127. The Board indicates that A.R.S. § 32-122.02(B) and (C) does not waive the financial assurance requirement for home inspectors who choose to put a certificate on inactive status, effectively requiring financial assurance to be maintained the entire duration a certificate is on inactive status, no matter how long that may be. However, the Board states it recognizes a home inspector may choose inactive status for a limited period of time or as a retirement vehicle pursuant to A.R.S. § 32-127(E). As such, the Board intends to amend R4-30-247 to require a home inspector who chooses to place a certificate on inactive status to retain financial assurance for at least two years from the date the inactive status application was approved. The Board indicates that this proposed amendment is intended to keep the public welfare intent of the

financial assurance requirement in place for a reasonable period of time, but allow a home inspector to enter retirement without the permanent burden of maintaining financial assurance.

While the proposed amendment to R4-30-247 clarifies that financial assurance need only be in place for two years rather than permanently for certificates placed on inactive status, reducing the burden on stakeholders, for reasons outlined below, Council staff has concerns regarding the burden of the two-year financial assurance requirement on those who intend to use inactive status as a retirement vehicle pursuant to A.R.S. § 32-127(E).

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.

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

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

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

The Board states it does not anticipate any negative economic impact upon the public as a result of this rulemaking.

With regard to the proposed amendments to R4-30-106 regarding forms of payments, the Board indicates its customers usually, and in the majority, pay for Board services with credit cards or personal checks. The Board states it absorbs the credit card fee, offsetting any financial burden to the payer. The Board states a person who chooses to make payment by money order or cashier's check if cash is not being accepted will incur a minor fee for the service.

With regard to the proposed amendment to R4-30-247 related to financial assurance, the Board states home inspectors are required by statute to bear the burden of obtaining and retaining financial assurance (professional liability insurance/bond) to protect the public. The Board indicates the rulemaking does not add to the burden and provides a two-year termination option if the home inspector permanently retires the certificate. The Board states, without this rulemaking, a home inspector who maintains a license by placing it on inactive status would be required by statute to retain the financial assurance permanently. The Board states this rule amendment will financially benefit retired home inspectors.

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?**

R4-30-106

The Board states in Section 2 of its economic, small business, and consumer impact statement that, other than incurring a small fee for a money order or cashier's check, "[t]he amendment to remove cash payment will have no costs or burden to the Board, the public or registrants." However, it is Council staff's position that not accepting cash itself will increase the burden on stakeholders, even if, as the Board indicates, its customers usually, and in the majority, pay for Board services with credit cards or personal checks, as it appears there are some customers who still pay fees in cash who will be directly impacted by this rulemaking. As previously raised with the Board's February 2020 submission, Council staff has concerns regarding whether amending the rule to allow limiting acceptable forms of payment for fees creates an unnecessary burden on stakeholders, given the stated justification of preventing cash theft from within the agency, an incident which the Board indicates has only occurred once. Council staff maintains concerns that the proposed amendment unnecessarily shifts burdens to stakeholders if the Board still intends to not accept cash for payment of fees as a means to address internal agency accounting concerns and questions whether the Board has adequately demonstrated that the probable benefits of the rule outweigh the probable costs, specifically to stakeholders who still make cash payments, pursuant to A.R.S. § 41-1052(D)(3).

Council staff also has concerns regarding whether the Board selected the alternative that imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective by proposing to not accept cash payments. *Id.* The Board states in Section 6 of its Notice of Final Rulemaking that "it has experienced circumstances in which not all forms of payment established in rule could actually be accepted and processed. In addition, the Board has been the victim of theft of cash by an employee during a period of time when appropriate controls for cash acceptance were lacking." However, the Board does not provide examples of methods to address difficulties accepting and processing payments or instituting appropriate controls for cash acceptance other than rulemaking to ultimately eliminate cash payments by stakeholders.

R4-30-247

The Board indicates home inspectors are required by statute to bear the burden of obtaining and retaining financial assurance (professional liability insurance/bond) to protect the public. The Board states the proposed amendment to R4-30-247 does not add to the burden and, in fact, reduces it by providing a two-year termination option if the home inspector permanently retires the certificate. The Board indicates, without this rulemaking, a home inspector who maintains a license by placing it on inactive status would be required by statute to retain the financial assurance permanently.

While the proposed amendment to R4-30-247 clarifies that financial assurance need only be in place for two years rather than permanently for certificates placed on inactive status,

reducing the burden on stakeholders, Council staff has concerns regarding the justification for the two-year obligation, especially for those who intend to use inactive status as a retirement vehicle pursuant to A.R.S. § 32-127(E). Specifically, Council staff has concerns regarding whether the the probable benefits of requiring retired home inspectors to maintain financial assurance for two years (e.g., public welfare) outweigh the probable costs to retired home inspectors (e.g. premiums) and whether the Board demonstrated that it selected the alternative that imposes the least burden and costs to retired home inspectors (e.g. a shorter timeframe for retirees under A.R.S. § 32-127(E)). *See* A.R.S. § 41-1052(D)(3).

6. What are the economic impacts on stakeholders?

Stakeholders include the Board, customers of the Board, and home inspectors.

The Board states the rulemaking will have no costs or burden to the Board and will eliminate the possibility of loss or theft of cash receipts from the Board. Customers of the Board may have to incur a minor fee if they choose to pay with a money order or cashier's check. The Board states retired home inspectors will financially benefit from the rulemaking by not having to bear the burden of obtaining and retaining financial assurance two years after retirement.

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

The Board indicates that there were no changes to the rules between the Notice of Supplemental Proposed Rulemaking filed on July 17, 2020 and the Notice of Final Rulemaking.

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

The Board indicates it received four written comments and one oral comment related to the proposed amendments. All comments related to the proposed amendments to R4-30-247 related to financial assurance requirements. Specifically, all comments indicate that the requirement to maintain financial assurance for two years after placing a certificate on inactive status would create an unnecessary financial burden. Copies of the written comments received are provided with the final materials for the Council's reference.

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

The proposed amendments to the rules do not modify the certification process or create a new certification and compliance with A.R.S. § 41-1037 is not applicable. Nevertheless, the home inspector certification outlined in R4-30-247 qualifies as a general permit as defined by A.R.S. § 41-1001(11) and is in compliance with A.R.S. § 41-1037.

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

The Board indicates that no corresponding federal laws apply.

11. Conclusion

Despite the modified proposed amendment language, Council staff maintains similar concerns as those outlined during the initial review of the February 2020 submission with regards to the proposed amendments to R4-30-106 and R4-20-247 and encourages the Council to discuss with the agency:

1. Whether the Board intends to limit acceptable forms of payments, thereby increasing the burden on stakeholders as an agency practice or policy rather than by rule, by removing references to forms of payment from R4-30-106 in the current proposed amendment in response to internal agency accounting concerns, and, if so, whether “the probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective,” pursuant to A.R.S. § 41-1052(D)(3).
2. Whether a requirement to maintain financial assurance for two years after placing a certificate on inactive status, specifically for the purpose of retiring pursuant to A.R.S. § 32-127(E), creates an unnecessary financial burden and, specifically, whether “the probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective,” pursuant to A.R.S. § 41-1052(D)(3).

The Board is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).



State of Arizona
BOARD OF TECHNICAL REGISTRATION

1110 W. Washington Suite 240 Phoenix, Arizona 85007 (602)364-4930 FAX: (602)364-4931 <https://btr.az.gov/>

12/7/2020

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

RE: A.A.C. R4-30-106(B) and A.A.C. R4-30-247 (regular rulemaking)

Dear Ms. Sornsin,

Enclosed is the administrative rule identified above which I am submitting, as the Designee of the Executive Director of the State Board of Technical Registration, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. § 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to ARS 41-1052.

1. The Close of the Record:
The close of the record was August 21, 2020. Submission of the rule is within the 120 days allowed for final rulemaking.
2. Procedures followed:
As required by the Administrative Procedures Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on November 8, 2019. A Notice of Supplemental Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on July 16, 2020. The Board held an oral proceeding on September 10, 2020. The Board received four written comments and one oral comment.
3. Whether the rulemaking relates to a five-year review report and, if applicable, the date the report was approved by the Council:
The rulemaking does not relate to a five-year review report.
4. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing a new fee:
The rulemaking does not include a new fee.

5. Whether the rule contains a fee increase:
The rulemaking does not contain a fee increase.

6. Whether an immediate effective date is requested for the rule under ARS 41-1032:
No immediate effective date is requested.

7. A list of all items enclosed:
 - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
 - b. 2020 Economic, Small Business, and Consumer Impact Statement, and;
 - c. A copy of the general and specific statutes authorizing the rule.
 - d. The Board's request to open rulemaking dockets

I certify that there is no study relevant to this rule making and none was relied upon.

I certify that the Board, as the preparer of the economics, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Melissa Cornelius', with a long horizontal stroke extending to the right.

Melissa Cornelius
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE #4. PROFESSIONS AND OCCUPATIONS
CHAPTER #30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

1. Article, Part, or Section Affected **Rulemaking Action**

R4-30-106	Amend
R4-30-247	Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: § 32-106(A)(1)(9), § 32-106(F), § 32-111(D)(7), and § 32-121

Implementing statutes: § 32-101, § 32-122.02(A)(5)

3. The effective date of the rules:

None

4. Previous notices that appeared in the *Register* concerning this final rule.

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

Notice of Proposed Rulemaking: 25 A.A.R. 3477, December 6, 2019

Notice of Supplemental Proposed Rulemaking. 26 A.A.R. 1425, July 17, 2020

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Kurt Winter, Communications Lead

Address: 1110 W. Washington, Ste. 240., Phoenix, AZ 85007

Telephone: (602) 364-4930

Fax: (602) 364-4931

E-mail: Kurt.Winter@azbtr.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:

A.A.C. R4-30-106 requires that Board fees be paid by cash, check, money order or credit card payments. The Board has experienced circumstances in which not all forms of payment established in rule could actually be accepted and processed. In addition, the Board has been the victim of theft of cash by an employee during a period of time when appropriate controls for cash acceptance were lacking. The Board has researched the fee payment statutes and rules for Title 32 boards and other agencies and found that 21 of the 28 boards and agencies do not define type of payment in statute or rule, giving those agencies the ability to adapt to circumstances that may be outside of the agency control. The Board intends to amend the rule to be consistent with the 21 agencies that do not define type of payment in law.

In addition, the Board has received requests for clarification related to the financial assurance home inspectors are required to obtain and retain per A.R.S. § 32-122.02 in the event a home inspector applies to place the certification on inactive status. The statute does not waive the financial assurance requirement for home inspectors who choose to put a certificate on inactive status. However, the Board recognizes a home inspector may choose inactive status either for a limited period of time, or as a permanent retirement vehicle. The Board's proposed rule requires a home inspector who chooses to place a certificate in inactive status to retain the financial assurance for at least two years from the date the inactive application is approved. The rule amendment is intended to keep the public welfare intent of the financial assurance in place for a reasonable period of time, but allow a home inspector to enter retirement without a permanent burden of financial assurance.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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:

The Board did not rely on any studies related to 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:

The proposed amendments will not diminish a previous grant of authority of a political subdivision of the state.

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

The Board does not anticipate any negative economic impact upon the public as a result of this rulemaking. The Board's customers usually, and in the majority, pay for Board services with credit cards or personal checks. The Board absorbs the credit card fee, offsetting any financial burden to the payer. A person who chooses to make payment by money order or cashier's check or who would need to purchase a money order or cashier's check if cash is not being accepted will incur a minor fee for the service.

Home inspectors are required by statute to bear the burden of obtaining and retaining financial assurance (professional liability insurance/bond) to protect the public. The rule making does not add to the burden and provides a two-year termination option if the home inspector permanently retires the certificate. Without this rulemaking, a home inspector who maintains a license by placing it on inactive status would be required by statute to retain the financial assurance permanently. This Rule will financially benefit retired home inspectors.

10. Changes made to the rules between proposed and final rules including all supplemental notices:

None

11. Summarize the principal comments received from the public and your agency's response to them:

Written comment: one (1) in favor of the changes; three (3) against the changes.

Oral comment: one (1) against the changes.

Comments in favor of summarized: the rule change to AAC R4-30-247 would help protect home inspectors

Comments against summarized: the rule change to AAC R4-30-247 would create a financial burden for retired home inspectors.

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:

Not Applicable

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

No corresponding federal laws apply. The rules are being promulgated under state law.

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

No one submitted an analysis to the Board regarding either of these rules.

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

Not applicable

14. Specify whether the rule was previously made as an emergency rule:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

R4-30-106. Fees

A. The Board shall charge the following fees:

1. A computer generated list of registrants for a non-commercial purpose is \$0.25 per name, with a maximum fee of \$300.00.
2. A computer generated list of registrants for a commercial purpose is \$0.25 per name, with a minimum fee of \$250.00.
3. The photocopy fee is \$1.00 for up to three pages followed by a \$0.25 fee for each additional page.
4. The replacement certificate fee for registrants and certificate holders is \$10.00 per certificate.
5. The recording medium copy fee is \$15.00 per recording.
6. The local examination review fee is \$30.00 per hour.
7. The returned check fee is \$25.00 per check.
8. The verification of registration or certification fee is \$25.00 per verification.
9. The laminated pocket card fee is \$10.00 per card.

B. A person paying fees shall remit them in United States dollars, ~~in the form of cash, check, money order, or credit card.~~ If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of ~~cash,~~ money order, or certified check.

C. Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.

D. Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

R4-30-247. Home Inspector Certification

A. An applicant for certification as a home inspector shall submit an original completed application package that contains the following:

1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;

2. The information in subsections (B) and (C);
 3. A completed fingerprint card;
 4. Applicable fees;
 5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the Arizona State Board for Private Postsecondary Education, or accredited by the Distance Education Accrediting Commission, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
 - a. Structural Components,
 - b. Exterior,
 - c. Roofing,
 - d. Plumbing,
 - e. Heating,
 - f. Cooling,
 - g. Electrical,
 - h. Insulation and Ventilation,
 - i. Interiors,
 - j. Fireplaces and Solid Fuel-Burning Devices,
 - k. Swimming Pools & Spas, and
 - l. Professional Practice;
 6. Evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All timeframes promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.
- B. A certified home inspector is not required to inspect a pool and/or spa as part of a home

inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the “Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors,” (“Standards”) adopted and published by the Board on February 28, 2012. Copies of the Standards are available at the Board’s office.

C. The application package shall contain the following:

1. Name, residence address, mailing address if different from residence address, and telephone number;
2. Date of birth and Social Security number of the applicant;
3. Citizenship or legal residence;
4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
 - d. Any alias or other name used by the applicant;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies; evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1;
6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity); June 30, 2018 Page 18 Supp. 18-2 4 A.A.C. 30 Arizona Administrative Code Title 4, Ch. 30 Board of Technical Registration
7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
8. A release authorizing the Board to investigate the applicant’s education, experience, and

moral character and repute;

9. Certification that the information provided to the Board is accurate, true, and complete;

10. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement; and

11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

D. The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, committee, or evaluator shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.

E. A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.

F. A home inspector who places a home inspector certificate on inactive status shall retain the proof of financial assurance for at least two years after the date that the certificate becomes inactive. A home inspector who fails to retain financial assurance for the required two years is subject to suspension and revocation of the home inspection certificate as per subsection (E). In order to reactivate an inactive home inspection certificate, a home inspector shall provide proof of financial assurance to the Board with the application for reactivation. An

inactive home inspector certification shall not qualify for reactivation until proof of financial assurance has been submitted to the Board.

F. G. In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION
ARTICLE 1. GENERAL PROVISIONS
ARTICLE 2. REGISTRATION PROVISIONS
R4-30-106 & R4-30-247

1. Identification of rulemaking.

This final rulemaking submitted by the Board of Technical Registration makes three amendments as follows:

1. R4-30-106 (B) is amended to delete the requirement that the agency accept cash as a form of payment.
2. R4-30-247(A)(5) is amended be in compliance with a statutory amendment to A.R.S. § 32-122.02(A)(5) which requires home inspector’s applicants to submit evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter12, article 3.1.
3. R4-30-247(E) is amended to clarify that the statutory requirement for a home inspector to maintain financial assurance under A.R.S. 32-122.02 (B) and (C) is not voided if the home inspector places the home inspector certification on inactive status.

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

The Board is seeking to amend R4-30-106(B) to remove the risk of loss of cash receipt to theft or other circumstances. The Board of Technical Registration is a small agency with a staff of twenty-one. It has implemented and does follow general accounting standards. However, its small size necessitates that additional firewalls be in place to protect receipts.

The Board is seeking to amend R4-30-247 (C)and(E) to conform to statute.

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:

Amending R4-30-106 to remove cash as a form of payment will mitigate loss or theft of cash receipts.

Amending R4-30-247(C) and (E) will conform to statute and provide appropriate guidance to home inspector applicants and certificate holders to avoid delay of application processing or suspension of home inspector certification.

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

The agency has experience one case of theft of cash receipts. The rule amendment will prevent any attempts of theft of cash in the future.

Amending R4-30-247(C) and (E) will conform to statute and provide appropriate guidance to home inspector applicants and certificate holders to avoid delay of application processing or suspension of home inspector certification.

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

The amendment to remove cash payment will have no costs or burden to the Board, the public or registrants.

The amendments to R4-30-247 align with statutory requirements and impose no new benefit or burden to the Board, public or registrants.

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

None

ii. Benefit:

None

iii. Need for additional Full-time Employees:

No additional Full-time employees needed.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

None

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

None

5. **Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

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

None

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

None

- c. **Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

- i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

NA

- ii. **Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

NA

- iii. **Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

NA

- iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**

NA

- v. **Exempting small businesses from any or all requirements of the rule.**

NA

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

NA

- 6. Statement of the probable effect on state revenues.**

None

- 7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

None

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

None



Kurt Winter <kurt.winter@azbtr.gov>

Assurance changes

1 message

Gonzalo Marquez <casasandhomesphx@gmail.com>

Mon, Jul 20, 2020 at 11:10 AM

To: kurt.winter@azbtr.gov

Good morning Kurt just received your email and here are my thoughts...

Unless there is a standard for file retention (which I'm not aware of), maintaining Financial Assurance two year post an inactive license really puts us in a bad situation because we're unable to defend any claims since we may no longer have the files/report.

I would say for a temporary period of inactivity a home inspector should be required to maintain Financial assurance throughout that entire time, this will also help reduce the number of inactive licenses.

As for retirement, I would say 60 days after the license is switched to inactive is sufficient time for a buyer to recognize any reasonable claims.

my two cents, good luck!



Kurt Winter <kurt.winter@azbtr.gov>

Proposed rule to shift liability to home inspectors for the first two years of their retirement

1 message

Brian Stevens <bstevens33@cox.net>

Tue, Jul 21, 2020 at 10:54 AM

To: kurt.winter@azbtr.gov

Cc: arizonaashi@gmail.com

Good morning Mr. Winter,

Thank you for the opportunity to express my opinion regarding the proposed rule to force inspectors to retain financial assurance coverage for two years following the initiation of inactive status.

The proposed rule, and any other law/rule which attempts to hold inspectors liable for work done in the past, conflicts with several basic tenets of home inspection:

1. Inspections are visual; items like plumbing, potentially hidden in walls, cannot be thoroughly evaluated. Water supply pipes could be serviceable the inspection day and leaking six months later.
2. Inspection observations are valid for the inspection day only. An HVAC condenser unit could run just fine on inspection day and six months later the run capacitor fails. Not even the HVAC professionals know when a run capacitor might fail.
3. Inspectors are generalists and *not* specialists. Inspections are *not* technically exhaustive and destructive evaluation/testing (i.e. opening a wall to check for leaks) is not allowed or expected, so discovery of items that might fail two years later is difficult if not impossible without further investigation by a specialist (which inspectors often recommend). To hold inspectors liable for items they cannot inspect is irrational and dubious in my opinion.

Also, such a rule sets a precedent/standard which no other residential contractor (e.g. plumber, HVAC) offers. Next time your HVAC person fixes your 15 year old air conditioner, ask them how long the fix is guaranteed and how long the air conditioner will run. A good HVAC person will tell you the truth: they can't make any guarantees, it might fail tomorrow or next week/month. Ask a plumber how long their fixes are guaranteed. Most are ninety days or less.

While the goal of protecting home buyers is reasonable to a degree, fact is every buyer is responsible for reading the inspector's report, following the recommendations, and bringing in all the right inspection folks (plumbers, roofers etc.) needed. Inspectors often recommend (for example) further investigation of water supply pipes and note end of life symptoms (e.g. rust on cast iron drain lines). Inspectors also note when items (HVAC, water heaters are some) are at or beyond their typical life expectancy and recommend a deeper investigation by a specialist.

If BTR really wants to help home buyers, convince more real estate agents to extend the contractual inspection period beyond the typical 10 day maximum. This would allow all buyers time to bring in a roofer, HVAC, plumber etc. (whatever specialists make sense given the age of various things). By having enough time to inspect thoroughly, with multiple specialists, the chances of a major issue being missed are reduced significantly.

Lastly, as noted briefly above, such a rule sets a risky precedent of shifting liability. Once an Arizona agency says it's fine to hold home inspectors liable two years after the inspection, it's not unreasonable to assume that same thinking could apply to all other construction-related professionals.

Note: this is my opinion only and not necessarily the opinion of AZ ASHI, National ASHI or any other home inspectors.

Thanks again for considering my input.

Best Regards,

Brian Stevens, retired home inspector.

State of Arizona Certified Home Inspector #38637 (inactive since 2013)

7/21/2020

State of Arizona Mail - Proposed rule to shift liability to home inspectors for the first two years of their retirement

ASHI Certified Inspector, ACI #210875 (retired)

AZ ASHI Member

Tile Roof Institute Certified Installer

State of Arizona Office of Pest Management Licensed #020147 (inactive)



Kurt Winter <kurt.winter@azbtr.gov>

FWD: Supplemental Proposed Rulemaking 7/17/2020

2 messages

bernie@sunsethomeinspection.com <bernie@sunsethomeinspection.com>
To: "Kurt.winter@azbtr.gov" <Kurt.winter@azbtr.gov>

Wed, Jul 22, 2020 at 10:09 AM

To whom it may concern:

I am opposed to the Board's rulemaking that requires a home inspector who chooses to place a certificate in inactive status to retain the financial assurance for at least two years from the date the inactive application is approved.

I believe the proposed rulemaking places an unnecessary obligation and financial burden upon the home inspector. In my case, I have already planned to retire from working at the end of the year. It is coincidental and timely that this subject comes at this time. Since I will be on a fixed income when I retire, I will be closely monitoring my expenses.

The following is the actual bond language for my home inspector bond: "This bond shall be one continuing obligation, and the liability of the Surety for the aggregate of any and all claims which have been awarded by litigation and deemed uncollectible shall in no event exceed the amount of the penalty hereof. However, no suit may be commenced on the bond after the expiration of one year following the rendering of services on which the suit is based".

The wording in that paragraph, as explained to me by the Hill & Usher Agency, "means that the Surety company still obligated to pay out on an ongoing claim even if the bond cancels. Also, a claim can't be filed by one of your clients after 1 year of your services".

I see no useful purpose in providing financial assurance for more than the year already provided by the bond company. I think it appropriate that the home inspector provide financial responsibility for the period of 1 year following the retirement of the certification. After that period of time, however, the members of the general public still have recourse in the judicial court system should they wish to seek damages.

It is my understanding the inspectors covered by E & O insurance can pay a reduced amount to the insurance company for "tail" coverage to cover them for the 1 year following termination of their insurance. The cost of "tail" coverage, although less than the actual annual premium, could be substantial. But again, to have to pay for "tail" coverage for 2 years is an unnecessary and undue financial burden placed upon the home inspector.

I wish to provide oral comment on this subject. Please confirm receipt of this email.



Thank you,

Bernie Rubin, Certification #38442
Sunset Home Inspection, Inc
Office: 480-614-6543
Cell: 480-330-8730

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>^..^<
 (__,_,,)~

----- Original Message -----

Subject: Supplemental Proposed Rulemaking 7/17/2020

From: "Arizona Board of Technical Registration" <News@azbtr.gov>

Date: 7/20/20 10:48 am

To: "bernie@sunsethomeinspection.com" <bernie@sunsethomeinspection.com>



Arizona State Board of Technical Registration

Attention AZ Registrants,

The Board has filed its supplemental proposed rulemaking with the Secretary of State. The rulemaking was published **7/17/2020**. You can find a copy of the proposed rules [HERE](#).

The Board proposes striking language defining type of payment the Board accepts from R4-30-106(B) Fees. This change, if adopted, is consistent with rules and statutes of 21 other Boards/Agencies, which do not define acceptable payment types.

Home Inspectors

The rulemaking was predicated upon the Board's receipt of questions related to financial assurance home inspectors are required to obtain and retain per A.R.S. § 32-122.02 in the event a home inspector applies to place the certification on inactive status. The statute does not waive the financial assurance requirement for home inspectors who choose to put a certificate on inactive status. However, the Board recognizes a home inspector may choose inactive status either for a limited period of time, or as a permanent retirement vehicle. The Board's proposed rule requires a home inspector who chooses to place a certificate in inactive status to retain the financial assurance for at least two years from the date the inactive application is approved. The rule amendment is intended to keep the public welfare intent of the financial assurance in place for a reasonable period of time, but allow a home inspector to enter retirement without a permanent burden of financial assurance.

The Board is accepting written comment regarding the rulemaking. Comments can be submitted to the Board office at 1110 W. Washington, Suite 240, Phoenix, AZ 85007 between 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days from the date of this published notice in the Register. The Board will schedule opportunity for oral comment if a request is submitted within that time-frame.

Please submit any written comments regarding the Supplemental Proposed Rulemaking to kurt.winter@azbtr.gov

Thank you.

Arizona Board of Technical Registration

[1110 W. Washington Street, Suite 240, Phoenix, AZ 85007](#)

[Unsubscribe - Unsubscribe Preferences](#)

Kurt Winter <kurt.winter@azbtr.gov>

Wed, Jul 22, 2020 at 10:12 AM

To: Patrice Pritzl <patrice.pritzl@azbtr.gov>, Melissa Cornelius <melissa.cornelius@azbtr.gov>

Does this count for a request for an oral proceeding? (see last line of email)

[Quoted text hidden]

--

Kurt Winter

Kurt Winter

Communication Specialist AZBTR

602-364-4883

Kurt.Winter@AZBTR.gov

Customer Satisfaction Survey

<https://goo.gl/forms/7MKsB9hDUFudg0SI3>



Kurt Winter <kurt.winter@azbtr.gov>

Home Inspectors inactive status

2 messages

Bob Hickerson <outlook_243778EE6F332963@outlook.com>
To: "kurt.winter@azbtr.gov" <kurt.winter@azbtr.gov>

Thu, Jul 23, 2020 at 8:56 AM

NO. The home inspector should not have to maintain the financial assurance while on inactive status when no inspections are being performed. This is financial hardship on the inspector and can be burden of thousands of dollars a year while on inactive status.

Robert Hickerson

Sent from [Mail](#) for Windows 10

Kurt Winter <kurt.winter@azbtr.gov>
To: Bob Hickerson <outlook_243778EE6F332963@outlook.com>

Thu, Jul 23, 2020 at 9:03 AM

Thank you for your comment. I will add it to the record.

[Quoted text hidden]

--

Kurt Winter

Kurt Winter

Communication Specialist AZBTR

602-364-4883

Kurt.Winter@AZBTR.gov

Customer Satisfaction Survey

<https://goo.gl/forms/7MKsB9hDUFudg0S13>

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

tion and a home inspection report. The “Report Checklist Supplement” is not a substitute for the current version of the “Standards of Professional Practice.”

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended under A.R.S. § 41-1033(J) at 25 A.A.R. 3323, effective April 24, 2019 (Supp. 19-2).

R4-30-103. Repealed**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-104. Repealed**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-105. Repealed**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-106. Fees

- A.** The Board shall charge the following fees:
1. A computer generated list of registrants for a non-commercial purpose is \$0.25 per name, with a maximum fee of \$300.00.
 2. A computer generated list of registrants for a commercial purpose is \$0.25 per name, with a minimum fee of \$250.00.
 3. The photocopy fee is \$1.00 for up to three pages followed by a \$0.25 fee for each additional page.
 4. The replacement certificate fee for registrants and certificate holders is \$10.00 per certificate.
 5. The recording medium copy fee is \$15.00 per recording.
 6. The local examination review fee is \$30.00 per hour.
 7. The returned check fee is \$25.00 per check.
 8. The verification of registration or certification fee is \$25.00 per verification.
 9. The laminated pocket card fee is \$10.00 per card.
- B.** A person paying fees shall remit them in United States dollars in the form of cash, check, money order, or credit card. If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.
- C.** Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.

- D.** Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Emergency amendments adopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted without change effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments readopted without change effective February 13, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments readopted without change effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency amendments readopted with changes effective October 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency amendments permanently adopted with changes effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective January 12, 1996 (Supp. 96-1). Amended effective January 15, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-107. Registration and Certification Expiration Dates

- A.** Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

Initial Registration Granted Date	Initial Triennial Renewal Expiration Date
Jan. 1 through Mar. 31	Three years from Mar. 31
Apr. 1 through Jun. 30	Three years from Jun. 30
Jul. 1 through Sept. 30	Three years from Sept. 30
Oct. 1 through Dec. 31	Three years from Dec. 31

- B.** Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
- C.** All annual registrations and certifications expire one year from the date of issuance.
- D.** Alarm business certifications expire three years from the date the certification is granted and subsequently every three years thereafter.
- E.** Alarm controlling persons and alarm agent certifications expire three years from the date the certification was granted and subsequently every three years thereafter.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1).

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

materials, mineral fuels, natural hazards and land use limitations.

3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
 4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
 5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
 6. Engineering: Experience in related branches of engineering (maximum six months' credit).
 7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant for geologist in-training designation shall successfully complete the fundamentals examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-243. Reserved**R4-30-244. Geologist Registration**

An applicant shall successfully complete the professional geologist examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-245. Reserved**R4-30-246. Reserved****R4-30-247. Home Inspector Certification**

- A. An applicant for certification as a home inspector shall submit an original completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
 2. The information in subsections (B) and (C);
 3. A completed fingerprint card;
 4. Applicable fees;
 5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the Arizona State Board for Private Postsecondary Education, or accredited by the Distance Education Accrediting Commission, or by an accrediting agency approved by the United States

Department of Education. The course of study shall encompass all of following major content areas:

- a. Structural Components,
 - b. Exterior,
 - c. Roofing,
 - d. Plumbing,
 - e. Heating,
 - f. Cooling,
 - g. Electrical,
 - h. Insulation and Ventilation,
 - i. Interiors,
 - j. Fireplaces and Solid Fuel-Burning Devices,
 - k. Swimming Pools & Spas, and
 - l. Professional Practice;
6. Evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All timeframes promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.
- B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors," ("Standards") adopted and published by the Board on February 28, 2012. Copies of the Standards are available at the Board's office.
- C. The application package shall contain the following:
1. Name, residence address, mailing address if different from residence address, and telephone number;
 2. Date of birth and Social Security number of the applicant;
 3. Citizenship or legal residence;
 4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
 - d. Any alias or other name used by the applicant;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
 5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies;
 6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity);

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
 8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and repute;
 9. Certification that the information provided to the Board is accurate, true, and complete;
 10. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement; and
 11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, committee, or evaluator shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.
- E.** A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.
- F.** In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

Historical Note

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 713 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-248. Reserved**
- R4-30-249. Reserved**
- R4-30-250. Reserved**

R4-30-251. Reserved

R4-30-252. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).
Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-253. Reserved

R4-30-254. Landscape Architect Registration

- A.** To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.
- B.** To satisfy the experience requirement, an applicant who is a graduate of a five-year landscape architectural degree program shall demonstrate successful completion of at least three years of experience directly related to the practice of landscape architecture. An applicant who is a graduate of a four-year landscape architectural degree program shall demonstrate successful completion of at least four years of experience directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture shall demonstrate an applicant's dedication to the protection of the public's health, safety and welfare and shall include the following:
1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
 2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.
 3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.
 4. Design: The preparation and use of sketches, plans, drawings, specifications, contracts, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
 5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards, including storm water quality.

32-101. Purpose; definitions

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Advertising" includes business cards, signs or letterhead provided by a person to the public.

2. "Alarm" or "alarm system":

(a) Means any mechanical or electrical device that is designed to emit an audible alarm or transmit a signal or message if activated and that is used to detect an unauthorized entry into a building or other facility or alert other persons of the occurrence of a medical emergency or the commission of an unlawful act against a person or in a building or other facility.

(b) Includes:

(i) A silent, panic, holdup, robbery, duress, burglary, medical alert or proprietor alarm that requires emergency personnel to respond.

(ii) A low-voltage electric fence.

(c) Does not include a telephone call diverter or a system that is designed to report environmental and other occurrences and that is not designed or used to alert or cause other persons to alert public safety personnel.

3. "Alarm agent":

(a) Means a person, whether an employee, an independent contractor or otherwise, who acts on behalf of an alarm business and who tests, maintains, services, repairs, sells, rents, leases or installs alarm systems.

(b) Does not include any action by a person that:

(i) Is performed in connection with an alarm system located on the person's own property or the property of the person's employer.

(ii) Is acting on behalf of an alarm business whose work duties do not include visiting the location where an alarm system installation occurs.

4. "Alarm business":

(a) Means any person who, either alone or through a third party, engages in the business of either of the following:

(i) Providing alarm monitoring services.

(ii) Selling, leasing, renting, maintaining, repairing or installing a nonproprietor alarm system or service.

(b) Does not include any of the following:

(i) A person or company that purchases, rents or uses an alarm that is affixed to a motor vehicle.

(ii) A person who owns or conducts a business of selling, leasing, renting, installing, maintaining or monitoring an alarm that is affixed to a motor vehicle.

- (iii) A person who installs a nonmonitored proprietor alarm for a business that the person owns, is employed by or manages.
- (iv) The installation or monitoring of fire alarm systems.
- (v) An alarm system that is operated by a city or town.

5. "Alarm subscriber" means any person who:

- (a) Leases, rents or purchases any monitored alarm system or service from an alarm business.
- (b) Leases or rents an alarm system.
- (c) Contracts with an alarm business for alarm monitoring, installation, repair or maintenance services.

6. "Architect" means a person who, by reason of knowledge of the mathematical and physical sciences and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture and is registered as an architect pursuant to this chapter.

7. "Architectural practice" means any professional service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents that the person is an architect or is able to perform any architectural service or other services recognized by educational authorities as architecture.

8. "Board" means the state board of technical registration.

9. "Controlling person":

- (a) Means a person who is designated by an alarm business.
- (b) Does not include an alarm agent.

10. "Engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 22, subdivisions (d) and (e) of this subsection, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if the person practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents that the person is a professional engineer or is able to perform or does perform any engineering service or other service recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not

represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer.

12. "Engineer-in-training" means a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more of a school approved by the board or who has four years or more of education or experience, or both, in engineering work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the engineer-in-training examination.

13. "Firm" means any individual or partnership, corporation or other type of association, including the association of a nonregistrant and a registrant who offers to the public professional services regulated by the board.

14. "Geological practice" means any professional service or work requiring geological education, training and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties and groundwater resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum and groundwater, and the geological phases of engineering investigations.

15. "Geologist" means a person, not of necessity an engineer, who by reason of special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by registration as a professional geologist. A person employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals shall not be deemed to be engaged in geological practice for the purposes of this chapter if the person engages in geological practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any geological services for persons other than the person's employer.

16. "Geologist-in-training" means a candidate for registration as a professional geologist who is a graduate of a school approved by the board or who has four years or more of education or experience, or both, in geological work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the geologist-in-training examination.

17. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the building, any reasonably accessible installed components and the operation of the building's systems, including the controls normally operated by the owner, for the following components of a residential building of four units or less:

- (a) Heating system.
- (b) Cooling system.
- (c) Plumbing system.
- (d) Electrical system.
- (e) Structural components.
- (f) Foundation.
- (g) Roof covering.
- (h) Exterior and interior components.
- (i) Site aspects as they affect the building.

(j) Pursuant to rules adopted by the board, swimming pool and spa.

18. "Home inspection report" means a written report that is prepared for compensation, that is issued after a home inspection and that clearly describes and identifies the inspected systems, structures and components of a completed dwelling and any visible major defects found to be in need of immediate major repair and any recommendations for additional evaluation by appropriate persons.

19. "Home inspector" means an individual who is certified pursuant to this chapter as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

20. "Landscape architect" means a person who, by reason of professional education or practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by registration as a landscape architect.

21. "Landscape architectural practice" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings of and approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph but shall not include the making of cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.

22. "Land surveying practice" means the performance of one or more of the following professional services:

(a) Measurement of land to determine the position of any monument or reference point that marks a property line, boundary or corner for the purpose of determining the area or description of the land.

(b) Location, relocation, establishment, reestablishment, setting, resetting or replacing of corner monuments or reference points which identify land boundaries, rights-of-way or easements.

(c) Platting or plotting of lands for the purpose of subdividing.

(d) Measurement by angles, distances and elevations of natural or artificial features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparation and perpetuation of field note records and maps depicting these features.

(e) Setting, resetting or replacing of points to guide the location of new construction.

23. "Land surveyor" means a person who by reason of knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals shall not be deemed to be engaged in land surveying practice for purposes of this chapter if the person engages in land surveying practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any land surveying services for persons other than the person's employer.

24. "Land surveyor-in-training" means a candidate for registration as a professional land surveyor who is a graduate of a school and curriculum approved by the board or who has four years or more of education or experience, or both, in land surveying work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the land surveyor-in-training examination.

25. "Low-voltage electric fence" means a fence that meets all of the following requirements:

- (a) Has an electric fence energizer that is powered by a commercial storage battery with a rated voltage of not more than twelve volts and that produces an electric charge on contact with the fence.
- (b) Is completely enclosed by a nonelectric fence or wall.
- (c) Is continuously monitored.
- (d) Is attached to ancillary components or equipment such as closed circuit television systems, access controls, battery recharging devices and video cameras.
- (e) Does not exceed ten feet in height or two feet higher than the nonelectric fence or wall described in subdivision (b) of this paragraph, whichever is higher.
- (f) Has identification warning signs attached at intervals of not more than sixty feet.
- (g) Is not installed in an area zoned exclusively for single family or multifamily residential use.
- (h) Does not enclose property that is used for residential purposes.

26. "Monitored alarm" means a device that is designed for the detection of an entry on any premises and that if activated generates a notification signal.

27. "Person" means any individual, firm, partnership, corporation, association or other organization.

28. "Principal" means an individual who is an officer of the corporation or is designated by a firm as having full authority and responsible charge of the services offered by the firm.

29. "Proprietor alarm" means any alarm or alarm system that is owned by an alarm subscriber who has not contracted with an alarm business.

30. "Registrant" means a person registered or certified by the board.

31. "Registration" means a registration or certification issued by the board.

32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed on it by law.
2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.
3. Consider and act on or delegate the authority to act on applications for registration or certification.
4. Conduct examinations for in-training and professional registration, except for an alarm business, a controlling person or an alarm agent.
5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.
6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction. In exercising these powers, the board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
7. Keep a record of its proceedings.
8. Keep a register that shows the date of each application for registration or certification, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration, if applicable, and the disposition of the application.
9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify the proficiency designation in the branch of engineering in which the applicant has designated proficiency on the certificate of registration and renewal card issued to each registered engineer and shall authorize the engineer to use the title of registered professional engineer. The board shall decide what branches of engineering it shall recognize.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full-time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration or review an applicant's submissions of required documents for home inspector certification and regulation and may fix the fee to be paid for these services. These employees are authorized to prepare, grade and monitor examinations, review an applicant's submissions of required documents for home inspector certification and regulation and perform other services the board authorizes, and to receive payment for these services from the technical registration fund. The board may contract with an organization to administer the registration examination, including selecting the test site, scheduling the examination, billing and collecting the fee directly from the applicant and grading the examination if a national council of which the board is a member or a professional association approved by the board does not provide these services. If a national council of which the board is a member or a professional association approved by the board does provide these services, the board shall enter into an agreement with the national council or professional association to administer the registration examination.

E. The board may rent necessary office space and pay the cost of this office space from the technical registration fund.

F. The board may adopt rules establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a condition of renewal of licenses.

H. Subject to title 41, chapter 4, article 4, the board may employ persons as it deems necessary.

I. The board shall issue or may authorize the executive director to issue a certificate or renewal certificate to each alarm business and each controlling person and a certification or renewal certification card to each alarm agent if the qualifications prescribed by this chapter are met.

32-111. Home inspector rules and standards committee

A. The home inspector rules and standards committee of the state board of technical registration is established and consists of:

1. Three home inspectors, one of whom is a resident of a county with a population of four hundred thousand persons or less, appointed by the board from a list of names any home inspector organization provides if the home inspector organization meets all of the following criteria:

- (a) Has at least forty members who are actively engaged in the practice of home inspection in this state.
- (b) Holds regular elections.
- (c) Publishes bylaws.
- (d) Maintains a code of ethics.

2. Two members of the board of technical registration, including:

- (a) An architect member or an engineer member of the board who is appointed by the chairman.
- (b) The public member.

B. The board may make appointments of home inspectors to the committee from the lists provided pursuant to subsection A, paragraph 1 of this section or from others having the necessary qualifications.

C. The board-appointed members serve staggered three-year terms. These members shall be home inspectors, shall each have at least five years of experience as a home inspector and shall have passed the examination prescribed in section 32-122.02. The board by a majority vote may remove any member for misconduct, incapacity or neglect of duty and may appoint a new member to complete a term.

D. The committee is responsible for drafting and recommending to the board:

- 1. Criteria for home inspector certification.
- 2. Standards for home inspection reports.
- 3. Standards for written examinations.
- 4. Standards for educational programs, including course of study, programs and continuing education.
- 5. Rules defining conduct.
- 6. Recommendations for types of financial assurances as required in section 32-122.02.
- 7. Other rules and standards related to the practice of home inspectors.

E. The committee may participate in the investigation and review of home inspector complaints as provided by the board.

F. Members of the home inspector rules and standards committee are eligible to receive compensation pursuant to title 38, chapter 4, article 1.

32-121. Certificate or registration required for practice

Except as otherwise provided in this section, a person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter. An alarm business or an alarm agent may install alarms if all of the following apply:

1. The alarm business has submitted an application for certification pursuant to section 32-122.05 or is a licensed contractor pursuant to chapter 10 of this title.
2. Each controlling person has submitted an application and proof of a valid fingerprint clearance card to the board pursuant to section 32-122.05.
3. The alarm agent has submitted an application and applied for a fingerprint clearance card pursuant to section 32-122.06.

32-122.02. Certification of home inspectors; insurance

A. An applicant for certification as a home inspector shall:

1. Be at least eighteen years of age.
2. Be of good moral character and repute.
3. Have passed within two years preceding application a written examination that is approved by the board and that meets the competency standards recommended by the home inspector rules and standards committee and adopted by the board.
4. Have passed a course of study that meets the standards recommended by the home inspector rules and standards committee and approved by the board.
5. Pay a fee as determined by the board and for initial certification shall provide to the board evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
6. Not have had a certificate denied or revoked pursuant to this chapter within one year immediately preceding the application.
7. Have received an absolute discharge from sentence at least five years before the application if the person has been convicted of one or more felonies, provided the board determines the applicant is of good moral character and repute.
8. Provide evidence of the applicant's ability to obtain financial assurance as provided by subsection B of this section.

B. Within sixty days after certification and before any fee-based home inspection is performed, a home inspector certified pursuant to this chapter shall file one of the following financial assurances pursuant to rules recommended by the home inspector rules and standards committee and adopted by the board:

1. Errors and omissions insurance for negligent acts committed in the course of a home inspection in an amount of two hundred thousand dollars in the aggregate and one hundred thousand dollars per occurrence.
2. A bond that is retroactive to the certification date in the amount of twenty-five thousand dollars or proof that minimum net assets have a value of at least twenty-five thousand dollars.

C. If a home inspector loses or otherwise fails to maintain a required financial assurance, the certification shall be automatically suspended and shall be reinstated if a financial assurance is obtained within ninety days. If a financial assurance is not obtained within ninety days, the certification shall be automatically revoked.

D. A home inspector is subject to this chapter and rules adopted pursuant to this chapter.

E. Except as provided in subsection A, paragraph 5 of this section, the board may not require the submission of a fingerprint clearance card for certification renewal or any other purpose.

ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, State Retirement System Board

New Article: Article 9

New Section: R2-8-901, R2-8-902, R2-8-903, R2-8-904



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 11, 2020

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, State Retirement System Board

New Article: Article 9

New Section: R2-8-901, R2-8-902, R2-8-903, R2-8-904

Summary:

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to add four new sections to clarify how contributions are remitted and how the ASRS may use compensation from a separate Employer for certain calculations depending on the date of membership. ASRS indicates these rules will clarify which compensation the ASRS will use for contribution accounting and pension calculations. ASRS states many members and employers are confused about what is "compensation" for ASRS purposes. ASRS states these rules will increase understandability of how the ASRS uses compensation in its calculations, but indicates the rules do not impose any additional requirements or burdens on members.

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

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

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

ASRS indicates this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

There is little to no economic, small business, or consumer impact, other than the minimal cost to ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to members and Employers with regard to the contributions they are required to submit for eligible compensation. Clarifying how to remit contributions will increase understandability of how a member accrues service and how the ASRS shall calculate a pension, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS members and Employers have notice about how the ASRS administers its retirement program.

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 employers remit contributions without imposing additional requirements on the public.

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

This rulemaking will affect state agencies to the extent that they are an ASRS Employer and must adjust the contributions they remit to the ASRS based on these rules. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules. This rulemaking does not provide any benefits or impose any costs on political subdivisions. No businesses are directly affected by the rulemaking. The rulemaking will have no impact on private or public employment. No businesses, regardless of size, are subject to the rulemaking. All ASRS members and Employers are directly affected by the rulemaking.

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

ASRS indicates there were no changes to the rules from the proposed rules in the Notice of Proposed Rulemaking to the rules in the current rulemaking package before the Council.

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

ASRS indicates it received no written comments regarding the rulemaking. ASRS also indicates no one attended the oral proceeding for this rulemaking held on July 18, 2017.

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

Not applicable. ASRS indicates that the rules do not require a permit, license, or agency authorization.

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

Not applicable. ASRS indicates there are no federal laws applicable to these rules.

11. Conclusion

ASRS seeks to add four new sections to clarify how contributions are remitted and how the ASRS may use compensation from a separate Employer for certain calculations depending on the date of membership. ASRS states these rules will increase understandability of how the ASRS uses compensation in its calculations, but indicates the rules do not impose any additional requirements or burdens on members.

ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

11/4/2020

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

**Re: A.A.C. Title 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 3, 2020 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Jeremiah Scott
Assistant Director

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

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
Article 9.	New Article
R2-8-901.	New Section
R2-8-902.	New Section
R2-8-903.	New Section
R2-8-904.	New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)
Implementing statutes: A.R.S. §§ 38-613, 38-711, 38-736, 38-737, 38-739, 38-746, 38-769, 38-797.05, 41-192

3. The effective date for the rules:

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

Not applicable.

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

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: 26 A.A.R. 2052, October 2, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 2033, October 2, 2020

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

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 adopt approximately four rules to clarify how contributions are remitted and how the ASRS may use compensation from a separate Employer for certain calculations depending on the date of membership. These rules will clarify which compensation the ASRS will use for contribution accounting and pension calculations. Many members and Employers are confused about what is "compensation" for ASRS purposes. These rules will increase understandability of how the ASRS

uses compensation in its calculations, 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:

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 rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to members and Employers with regard to the contributions they are required to submit for eligible compensation. Clarifying how contributions must be remitted to the ASRS and how members accrue service credit will increase the understandability of how the ASRS shall calculate a pension, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS members and Employers have notice about how the ASRS administers its retirement program. Thus, the economic impact is minimized.

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

None

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on July 18, 2017.

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 9. COMPENSATION**

Section

Article 9. Compensation

R2-8-901. Definitions

R2-8-902. Remitting Contributions

R2-8-903. Accrual of Credited Service

R2-8-904. Compensation from an Additional Employer

ARTICLE 9. COMPENSATION

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.

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.

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.

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 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.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT^[1]

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to adopt approximately four rules to clarify how it defines “compensation” for various members and uses different types of compensation for certain calculations. The rules also need to clarify how the ASRS may use compensation from a separate Employer for certain calculations depending on the date of membership. These rules will clarify which compensation the ASRS will use for contribution accounting and pension calculations. These rules will increase understandability of how the ASRS uses compensation in its calculations, 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 collects approximately \$2 Billion in contributions each year from approximately 212,000 active members and 667 employers. Every year, the ASRS pays approximately \$2.8 billion in pension benefits to approximately 131,536 members. Pension benefits are calculated using the member’s average monthly salary which is determined based on the compensation for which the member’s Employer has remitted contributions. However, pensions must be adjusted if an error occurred in the amount of contributions or the amount of compensation that was remitted and/or reported to the ASRS. Members and Employers seem to misunderstand how service is accrued based on the contributions that are remitted for specific types of compensation. The ASRS receives numerous inquiries regarding for which compensation an Employer should withhold and remit contribution amounts. Clarifying for which types of compensation an Employer should be withholding and remitting contribution amounts and how the member accrues service based on those contributions will ensure that the correct amount of compensation is reported and the correct amount of pension is paid to a member based on the member’s compensation that is eligible for ASRS purposes. Ultimately, this will increase the accuracy of contributions that are remitted, thereby reducing the need for pension adjustments.

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 and Employers are confused about how contributions are remitted and service is accrued. Such confusion leads to the incorrect amount of contributions and/or pension being calculated, which requires an adjustment upon discovery. Since fiscal year 2015, the ASRS has received approximately 30 appeals relating to eligible compensation disputes and has adjusted approximately 724 pensions. By promulgating these rules, members and Employers will have a better understanding of the various types of compensation that are eligible for ASRS purposes and how to remit contributions and earn service credit based on that compensation. Increasing understanding of such eligible compensation and contributions should reduce the need for adjustments as well as the number of appeals that arise out of members’ and Employers’ misconceptions.

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

This rulemaking will clarify how compensation should be reported to the ASRS through contributions, thereby increasing understandability of how members' benefits may be affected and increasing the efficiency of the administration. Clarifying how Employers remit contributions and members accrue service credit will ensure that the proper amount of contributions are remitted to the ASRS and the ASRS pays the correct amount of pension based on the contributions it has received for a member. As discussed above and below, these rules will increase the clarity and effectiveness of how contributions are remitted, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of what compensation is eligible for ASRS purposes.

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

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 rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to members and Employers with regard to the contributions they are required to submit for eligible compensation. Clarifying how to remit contributions will increase understandability of how a member accrues service and how the ASRS shall calculate a pension, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS members and Employers have notice about how the ASRS administers its retirement program. Thus, the economic impact is minimized.

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

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: 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 and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 608,150.

Specifically, Employers will be required to remit contributions on a behalf of a member based on these rules. This rulemaking may affect the actual amount that is withheld from an employee's paycheck. These rules will clarify how Employers remit contributions and members accrue service credit. Such clarification will benefit Employers, members, beneficiaries, and alternate payees by increasing public understanding of how the ASRS administers its retirement 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:

This rulemaking will affect state agencies to the extent that they are an ASRS Employer and must adjust the contributions they remit to the ASRS based on these rules. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.
 - b. Costs and benefits to political subdivisions directly affected by the rulemaking:

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

No businesses are directly affected by the rulemaking.
6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.
7. Impact on small businesses[2]:
 - a. Identification of the small business subject to the rulemaking:

No businesses, regardless of size, are subject to the rulemaking.
 - b. Administrative and other costs required for compliance with the rulemaking:

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

Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

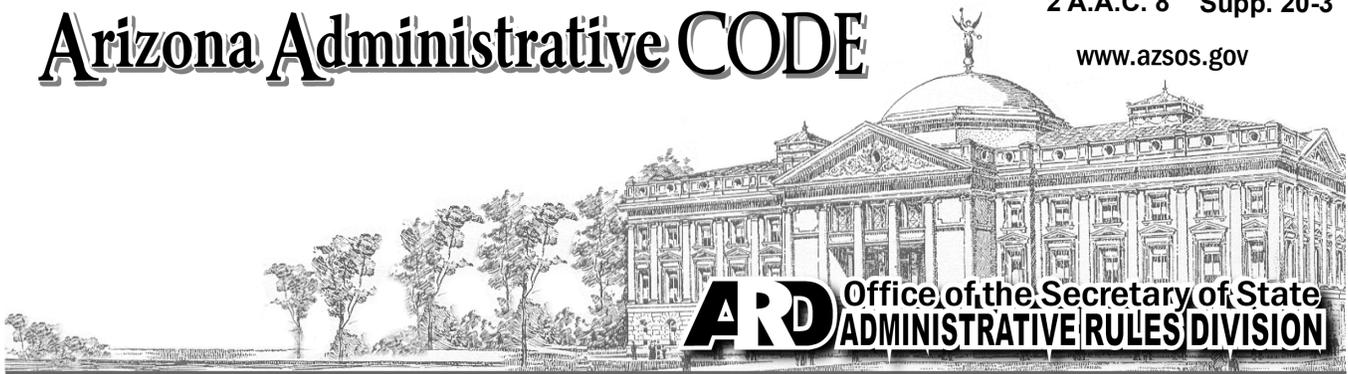
All ASRS members and Employers are directly affected by the rulemaking. The effect has been previously described above.
9. Probable effects on state revenues:

There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify how employers remit contributions without imposing additional requirements on the public.

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

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



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 July 1, 2020 through September 30, 2020.

R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5	R2-8-129.	Period Certain and Life Annuity Retirement Options	15
R2-8-120.	Repealed	8	R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant	15
R2-8-126.	Retirement Application	12	R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation	17
R2-8-127.	Re-Retirement Application	14	R2-8-132.	Survivor Benefit Options	18
R2-8-128.	Joint and Survivor Retirement Benefit Options	15	R2-8-133.	Survivor Benefit Applications	19

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: JessicaT@azasrs.gov

The release of this Chapter in Supp. 20-3 replaces Supp. 20-1, 1-44 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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



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

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

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R2-8-127.	Re-Retirement Application	Exhibit L, Table 3.	Repealed	25
R2-8-128.	Joint and Survivor Retirement Benefit Options	Exhibit L, Table 4.	Repealed	25
R2-8-129.	Period Certain and Life Annuity Retirement Options	Exhibit L, Table 5.	Repealed	25
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Table 2.	Repealed	Exhibit M, Table 4.	Repealed	26
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		Exhibit M, Table 6.	Repealed	26

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4) (Supp. 17-2).

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

04-2).

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Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

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ARTICLE 1. RETIREMENT SYSTEM**R2-8-101. Repealed****Historical Note**

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 ASRS 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 by a member to be placed in the member's account; and
 - c. Amounts credited by transfer under A.R.S. § 38-924.
 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).
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).

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****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

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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;
 2. The member's Social Security number or U.S. Tax Identification number;
- E.** If ASRS has received contributions for the member within six months immediately preceding the date the member submitted 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 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;
 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.
- F.** 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;
- G.** 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 rollover or a cash distribution;
- H.** Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
- I.** Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
- J.** 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;
- K.** 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
- L.** 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;
- M.** 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;
- N.** 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.

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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 without 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:

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- 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 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;
 - 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 continue submitting the Working After Retirement form to the retired member's Employer.
- 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).

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;
 - 3. Amounts credited by transfer under A.R.S. § 38-922; 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 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-

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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).

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. Repealed**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).

R2-8-122. Remittance of Contributions

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

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).

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:
- The interest and investment return rate assumptions are determined by the Board.
 - The actuarial value of assets equals the market value of assets:
 - Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
 - 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

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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 amendments 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). 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

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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).
- 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).

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- 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
 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).

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- M.** 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 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:
1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
 3. "Applicable retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership.
 4. "Conservator" means the same as in A.R.S. § 14-7651.
 5. "DRO" means the same as in R2-8-115.
 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:
 - a. One document issued from a United States government entity; or
 - b. 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:
 - a. The date a member retires from the ASRS for the first time; or
 - b. 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:
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. The member's current mailing address; if not On File with ASRS;
 5. The member's date of birth, if not On File with ASRS;
 6. A retirement date according to A.R.S. § 38-764(A);
 7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
 - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
 - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
 9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
 - a. The beneficiary's full name;
 - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
 - c. The beneficiary's date of birth;
 - d. The beneficiary's relationship to the member; and
 - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
 10. Whether the member is electing the Optional Health Insurance Premium Benefit;
 11. 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:
 - a. Whether the member's spouse consents to the member making a beneficiary election that provides the 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:

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- 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.
- C.** 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 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

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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);
 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;

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- 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.
- 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).

R2-8-128. 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.

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 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

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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.
 - 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.

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- 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
 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

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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.
- 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 beneficiary 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).

R2-8-132. 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

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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:
 - (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

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- 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:
 - 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

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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, 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

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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**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 C. 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 D, 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 D, Table 2. Repealed

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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 contingent annuitant 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).
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. "Original retirement date" means the same as in R2-8-126.
8. "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.
9. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
10. "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.
11. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
12. "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).

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

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- 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 an active 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 as an active member 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).
- 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 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

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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).

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;
 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 residential mailing address and telephone number;
 4. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
 5. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
 6. The type of change that is being made to the Coverage;
 7. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social security number;
 - c. Date of birth; and
 - d. Medicare number, if applicable.
 8. The old and new premium amounts for Coverage;
 9. The effective date of the change, deletion, and/or enrollment;
 10. The Employer's name and telephone number;

11. 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).

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).
- 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;
 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;
 - 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;
 - 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;

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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).

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;
 2. The retired member's full name and gender;
 3. The retired member's current mailing address;
 4. The retired member's date of birth;
 5. The retired member's email address;
 6. The retired member's phone number;
 7. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
 8. 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;
 - b. The full name;
 - c. The mailing address;
 - d. The phone number;
 - e. The date of birth; and
 - f. The gender and relationship to the retired member; and
 9. 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 either be participating or eligible to participate in my retiree health care plan at the time of my death;
 - d. I must provide a Social Security Number and 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 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:
 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).

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.

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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).

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).

R2-8-304. 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 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.

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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).
- 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.

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 monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly 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 monthly 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).

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

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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 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.

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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 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 Arizona Revised Statutes Section 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(s) 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. A 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-

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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).

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 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-

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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 returned, 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).

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 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.

- 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.

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- 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.
- gible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the 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.

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

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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:
 - 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.

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- 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 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

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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);
 - 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;

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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 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;

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- 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.
- 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:

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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 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

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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.

- 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:

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- 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:
 - 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).

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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.
- 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

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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).

- 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. EXPIRED**R2-8-901. Expired**

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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).

R2-8-902. 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).

R2-8-903. 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).

R2-8-904. 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).

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 employer 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

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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
 - 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;
 - 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 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; and
 - i. The dated signature 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.

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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;
 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

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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;
 - 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:

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- 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.
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.
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 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.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
 1. If the Other Retirement Plan's Cost is less than the ASRS 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).
- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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.

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;

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- K.** 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.
- L.** The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M.** 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 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).

38-613. State employee suggestion program awards: fund

A. The director of the department of administration may adopt rules to provide an award to any state employee for any of the following:

1. An adopted procedure or idea that resulted in eliminating or reducing state expenditures or improving operations in the public interest.

2. The performance of a special act or service in the public interest.

B. The governor shall appoint a five member board that serves at the governor's pleasure for four year staggered terms to establish policy for the operation of the state employee suggestion program, review all suggestions and approve all awards with the concurrence of the head of the agency in which the cost saving is realized. The board shall elect a chairman each year.

C. The award may equal no more than ten per cent of the amount saved as a result of the suggestion.

D. A state employee suggestion program award fund is established consisting of identified measurable dollar savings transferred from appropriated and nonappropriated monies in the budget unit where the cost saving is realized, except that monies may not be transferred from the state general fund. The board shall initiate fund transfers with the concurrence of the director of the department of administration. Except as provided in subsection G of this section, the director of the department of administration shall use monies in the state employee suggestion program award fund for the following purposes only:

1. To make awards pursuant to this section.

2. To purchase recognition materials with a cost of not to exceed fifty dollars for each award.

E. The board shall certify to the director of the department of administration the names of persons granted awards and the amounts of the awards. On certification of the names and the amounts of the awards the director of the department of administration shall draw a warrant on the state treasurer. The state treasurer shall pay the warrant from the state employee suggestion program award fund.

F. An award to a state employee shall not be considered as extra compensation.

G. The director of the department of administration may use up to six per cent of any monies transferred to the state employee suggestion program award fund for the purposes of administering, advertising and promoting the state employee suggestion program.

H. Elected officials, directors, deputy directors, managers and supervisors are not eligible for awards pursuant to this section.

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.

38-736. Member contributions

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

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

38-737. Employer contributions

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

seek to improve the funded status whenever the ASRS trust fund is less than one hundred percent funded.

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

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 15 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

38-739. Credited service

A. A member shall not earn more than one year of credited service in any fiscal year.

B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.

C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.

D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.

E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.

F. The following years of service are excluded from credited service under this article:

1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.

2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

38-746. Compensation limitation; adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in

subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

38-769. Maximum retirement benefits; termination; definitions

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which

the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this

section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions; compromise and settlement monies

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.
2. Establish administrative and operational policies and procedures within his department.
3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.
4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.
5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on its behalf. At any time within thirty days after the notification, the political subdivisions, school districts and municipalities, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.
6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or their duly authorized legal representatives in such action.
7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Subject to chapter 4, article 4 of this title, employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in subsections E and F of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.

2. The residential utility consumer office.

3. The industrial commission.

4. The Arizona board of regents.

5. The auditor general.

6. The corporation commissioners and the corporation commission other than the securities division.

7. The office of the governor.

8. The constitutional defense council.

9. The office of the state treasurer.

10. The Arizona commerce authority.

E. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

F. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

G. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

H. Appropriations made pursuant to subsection G of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F of this section are applicable shall be performed by special or regular assistants to the attorney general.

I. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

J. Unless otherwise provided by law, monies received for and belonging to the state and resulting from compromises and settlements entered into pursuant to subsection B of this section, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be deposited into the state treasury and credited to the state general fund pursuant to section 35-142. Monies received for and belonging to the state and resulting from a compromise or settlement are not considered custodial, private or quasi-private monies unless specifically provided by law. On or before January 15, April 15, July 15 and October 15, the attorney general shall file with the governor, with copies to the director of the department of administration, the president of the senate, the speaker of the house of

representatives, the secretary of state and the staff director of the joint legislative budget committee, a full and complete account of the deposits into the state treasury made pursuant to this subsection in the previous calendar quarter. For the purposes of this subsection, "restitution" means monies intended to compensate a specific, identifiable person, including this state, for economic loss.

ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, Article 3, Long-Term Disability

Amend: R2-8-303



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 11, 2020

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM**
Title 2, Chapter 8, Article 3, Long-Term Disability

Amend: R2-8-303

Summary:

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to amend R2-8-303 related to Long-Term Disability (LTD) benefits. Specifically, on August 27, 2019, SB1079 (2019) became effective and amended the definition for what it means to be disabled for Long-Term Disability (LTD) benefits. As such, ASRS indicates it must amend its rules to clarify how the new definition will be implemented. ASRS states such clarification will ensure members are aware of when they may be eligible to receive LTD benefits. ASRS indicates the rules do not impose any additional requirements or burdens on members and the same regulatory objective is achieved while reducing the regulatory burden.

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

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

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

ASRS indicates this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

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, ASRS. ASRS effectively administrates how public-sector employers and employees participate in ASRS. As such, 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 ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies in further detail whether a member is eligible for LTD benefits.

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?**

ASRS believes this is the least costly and least intrusive method because it will clarify how ASRS calculates LTD benefits without imposing any additional requirements on the public.

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

All LTD members are directly affected by this rulemaking because it will clarify how ASRS calculates LTD benefits. However, ASRS has determined that no new full-time employees will be required to implement and enforce the rules. This rulemaking does not provide any benefits or impose any costs on political subdivisions, other than the cost on some employer charter schools to provide information that is required by statute to process a member's application for benefits. No businesses are directly affected by the rulemaking. The rulemaking will have no impact on private or public employment. No businesses, regardless of size, are subject to the rulemaking.

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

ASRS indicates there were no changes to the rules from the proposed rules in the Notice of Proposed Rulemaking to the rules in the current rulemaking package before the Council.

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

ASRS indicates it received no written comments regarding the rulemaking. ASRS also indicates no one attended the oral proceeding for this rulemaking held on November 3, 2020.

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

Not applicable. ASRS indicates that the rules do not require a permit, license, or agency authorization.

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

Not applicable. ASRS indicates there are no federal laws applicable to these rules.

11. Conclusion

ASRS seeks to amend R2-8-303 in response to SB1079 (2019) to clarify how the new definition of disabled for the purposes of LTD benefits will be implemented. ASRS states such clarification will ensure members are aware of when they may be eligible to receive LTD benefits. ASRS indicates the rules do not impose any additional requirements or burdens on members and the same regulatory objective is achieved while reducing the regulatory burden.

ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

11/4/2020

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

**Re: A.A.C. Title 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 3, 2020 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Jeremiah Scott
Assistant Director

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

PREAMBLE

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

R2-8-303

Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-797 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):

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 proposed rules:

Notice of Docket Opening: 26 A.A.R. 2052, October 2, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 2031, October 2, 2020

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

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

On August 27, 2019, SB1079 (2019) became effective and amended the definition for what it means to be disabled for Long-Term Disability (LTD) benefits. As such, the ASRS needs to amend its rules in order clarify how the new definition will be implemented. This rulemaking will clarify how ASRS will implement the new LTD definition. Such clarification will ensure members are aware of when they may be eligible to receive LTD benefits. However, the rules do not impose any additional requirements or burdens on members, other than those required in statute. Thus, the same regulatory objective is achieved while reducing the regulatory burden.

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

None

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

Not applicable

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

The 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 whether a member is eligible for LTD benefits.

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

None

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on November 3, 2020.

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:

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:

None of the rules requires 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 on the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

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

None

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

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 3. LONG-TERM DISABILITY

Section

R2-8-303. Long-Term Disability Calculation

ARTICLE 3. LONG-TERM DISABILITY

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.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

On August 27, 2019, SB1079 (2019) became effective and amended the definition for what it means to be disabled for Long-Term Disability (LTD) benefits. As such, the ASRS needs to amend its rules in order clarify how the new definition will be implemented.

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

Currently, the ASRS collects approximately \$2 Billion in contributions each year from approximately 212,000 active members and 667 employers. The ASRS pays approximately \$3 Billion in benefits each year to approximately 160,000 retired members and their survivor beneficiaries, including approximately 3,300 long-term disability members. However, members seem to misunderstand how the LTD program operates and how the ASRS calculates an LTD benefit. With the changes completed in this rulemaking, the calculation for an LTD benefit will be clearer and more effective. Ultimately, the rules will clarify how ASRS administers the LTD program, thereby providing clear notice to the public.

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

A misunderstanding of how the ASRS calculates an LTD benefit can result in a misunderstanding of the amount of an LTD benefit which can cause significant hardship to LTD members. Implementing clear and concise language will ensure members understand how the ASRS calculates an LTD benefit. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

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

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

As indicated above, this rulemaking will clarify how the ASRS calculates an LTD benefit, thereby increasing understandability of LTD benefits and increasing the efficiency of the administration. Clarifying how the ASRS calculates LTD benefits will increase understanding of LTD benefits, thereby reducing confusion and appeals that arise out of misunderstanding how the ASRS calculates LTD benefits. Such clarification will ensure that members understand how the ASRS will determine their LTD benefit. As discussed above and below, these rules will increase the clarity and effectiveness of how ASRS provides LTD benefits, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of the program.

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 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 whether a member is eligible for LTD benefits.

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

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, LTD members will be directly affected by this rulemaking. These rules will clarify how the ASRS calculates LTD benefits. Such clarification will benefit members by increasing the understandability of how the ASRS provides LTD benefits.

5. Cost-benefit analysis:

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

All LTD members are directly affected by this rulemaking because it will clarify how ASRS calculates LTD benefits. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

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

This rulemaking does not provide any benefits or impose any costs on political subdivisions, other than the cost on some employer charter schools to provide information that is required by statute to process a member's application for benefits.

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

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

² 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 LTD 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 the ASRS calculates LTD benefits without imposing any additional requirements on the public.

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).

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).

R2-8-304. 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 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).

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 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.

38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.

2. "Assets" means the accumulated resources of the LTD program.

3. "Board" means the ASRS board established pursuant to section 38-713.

4. "Compensation" has the same meaning prescribed in section 38-711.

5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.

6. "Employer" has the same meaning prescribed in section 38-711.

7. "Employer contributions" means all amounts paid into the LTD program by an employer.

8. "Fiscal year" has the same meaning prescribed in section 38-711.

9. "LTD program" means the long-term disability program established by this article.

10. "Member" has the same meaning prescribed in section 38-711.

11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly

compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers, as the ASRS actuary determines pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

38-797.07. LTD program benefits; limitations; definitions

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are

denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period the member receives LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

38-797.09. Facility of payment

In the case of incapacity of a member receiving LTD program benefits, or in the case of any other emergency as determined by the board, the board may make LTD program benefit payments on behalf of the member to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the member and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or the LTD program, or both, under or in connection with the LTD program.

38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

NAVIGABLE STREAM ADJUDICATION COMMISSION

Title 12, Chapter 17, Arizona Navigable Stream Adjudication Commission



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2020

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

FROM: Council Staff

DATE: December 7, 2020

SUBJECT: Navigable Stream Adjudication Commission
Title 12, Chapter 17

This Five-Year-Review Report (5YRR) from the Navigable Stream Adjudication Commission (ANSAC) relates to rules in Title 12, Chapter 17. The Commission determines the navigability of Arizona's rivers and streams as of Statehood date February 14, 1912. ANSAC determines the watercourse navigability or non-navigability by holding evidentiary hearings. The rules layout the Commission's hearing process.

In the last 5YRR of these rules the Commission did not propose any changes to the rules.

Proposed Action

The Commission is not proposing any changes to the rules.

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

Yes, the rules cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Stakeholders are identified as the Commission and parties of Commission hearings.

The rules under review pertain to the procedures of Commission hearings and cases considered by the Commission. It is the opinion of the Commission that with each rule under review, there is no one regulated by the Commission and no economic, small business, or consumer impact related to the rule.

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 Commission believes that there is no one regulated by the Commission and that each rule under review has no regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Commission indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Commission indicates the rules are clear, concise, and understandable.

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

Yes, the Commission indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Commission indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Commission indicates the rules are enforced as written.

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

No. The Commission indicates the rules are not more stringent than federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010 and do not require a permit or license.

11. Conclusion

As indicated above the Commission is not proposing any changes to the rules. The rules are clear, concise, understandable. Council Staff recommends approval of this report.



DOUGLAS A. DUCEY
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room B-54, Phoenix, Arizona 85007

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GEORGE MEHNERT
Executive Director

October 8, 2020

Arizona Governor's Regulatory Review Council
ATTN: Nicole Sornsin, Chairperson
100 N. 15th Ave #305
Phoenix, AZ 85007

Five-Year Rule Review Report

Dear Ms. Sornsin:

The Arizona Navigable Stream Adjudication Commission (ANSAC) submits this Five-Year Rule Review Report. ANSAC believes the report complies with the requirements of A.R.S. §41-1056.

Additionally, ANSAC believes it is in compliance with A.R.S. §41-1091.

If you need any additional information please contact us at (602) 542-9214 or at our email address nav.streams@ansac.az.gov.

We want to thank GRRC for authorizing a time extension. I simply missed the email reminder and therefore overlooked the due date for filing the five-year rule review report.

Sincerely,

A handwritten signature in black ink, appearing to read "George Mehnert".

George Mehnert
Director

ARIZONA NAVIGABLE STREAM
ADJUDICATION COMMISSION

FIVE-YEAR RULE REVIEW REPORT
Title 12 Natural Resources Chapter 17

Submitted October 8, 2020

ANSAC Missions:

1. To determine the navigability of Arizona's approximately 39,039 rivers and streams as of Statehood date, February 14, 1912. The reason for this is to determine streambed title/land title or ownership of the beds of rivers and streams to help clear the more than 100,000 estimated clouded property titles. The ANSAC hearing process includes all Arizona watercourses except the Colorado River which is federally owned.

2. To determine the Public Trust Value of any Arizona Watercourse or reach or segment of any watercourse that through ANSAC adjudications and court processes is determined to have been navigable at the time of statehood.

NOTE: ANSAC does not deal with water rights, water use, water ownership, or water diversion issues or other similar related subjects and deals only with matters relating to Land Title to the beds of Arizona' Rivers and Streams. Some other agencies and laws are responsible for specific water-related issues.

Description:

The Arizona Navigable Stream Adjudication Commission is a General Fund single budget program commission.

ANSAC determines watercourse navigability or non-navigability by holding evidentiary hearings. Hearings include using professionals to conduct particularized studies regarding issues that affect navigability. ANSAC has held more than 160 watercourse navigability hearings with some hearings including as many as eight days of witness testimony. Witnesses include private Arizona citizens, Arizona Legislators, tribal Historians, and many Ph.D. and other professionals in areas such as history, fluvial geomorphology, geology, hydrology, and marine archeology. The most recent hearings were for the Gila, Salt, San Pedro, Santa Cruz, and Verde rivers, concluding in August 2018. Regarding the recent hearings about these five rivers, ANSAC has received thousands of pages of additional documentary evidence.

Generally, for ANSAC purposes if a river was navigable at the time of statehood, then title to the streambed is subject to ownership by the government, and if a river was non-navigable at the time of statehood, then title to the streambed is subject to ownership by the person whose land the river crosses, borders, or flows on.

Most recently the Commission determined for an additional time five major rivers were non-navigable at statehood (Gila, Salt, San Pedro, Santa Cruz, and Verde). The most recent hearings concluded on June 28, 2018, with the determinations that all five rivers were non-navigable at the time of statehood.

Following the Commission's final reports regarding these five rivers the deadline for filing appeals of ANSAC's determinations in Superior Court was approximately March 29, 2019.

There have been no appeals of the Commission's 2018 determinations of non-navigability regarding the San Pedro and Santa Cruz Rivers. Appeals regarding the Commission determinations of non-navigability regarding the Gila, Salt, and Verde Rivers were filed with the Maricopa County Superior Court in March 2019 following which ANSAC transmitted 27 banker boxes of records regarding those rivers to that court.

Maricopa County Superior Court most recently ruled in favor of ANSAC's determinations of non-navigability for the Gila, Salt, and Verde Rivers. Appeals of Maricopa County Superior Court's decisions in these cases must be filed with the Arizona Court of Appeals October 2, 2020. We believe one party will appeal these cases because we have been advised that party has asked for an extension to October 9, 2020.

ANSAC may also file legal actions in court if necessary.

In the event courts ultimately rule a specific watercourse or reach or segment of a watercourse was navigable at the time of statehood; there is a statutory requirement that ANSAC holds proceedings to determine the Public Trust Value of such watercourses, reaches, or segments.

In the event a court issues any directives to ANSAC to do additional work, ANSAC intends to comply with those directives.

Once all reports have been through the ANSAC hearings process and the court procedures and all casework is completed, then ANSAC will record all reports in each county where each river travels of borders (in the case of the Gila River that involves six counties) and will begin the Sunset process following completion of any additional legal work. This will hopefully be long before the current Sunset date of June 30, 2024.

The following Rules R12-17-101 through R12-17-110 are the rules under which the Commission operates. There have been no other rules adopted by ANSAC and none are anticipated.

RULES TITLES

Rule 12-17-101 Petition to Modify Priorities

Rule 12-17-102 Computation of Time

Rule 12-17-103 Service of Documents

Rule 12-17-104 Notice of Appearance as a Party

Rule 12-17-105 Evidence

Rule 12-17-106 Hearings

Rule 12-17-107 Hearing Record

Rule 12-17-108 Legal Memoranda

Rule 12-17-109 Hearing to Identify Public Trust Values

Rule 12-17-110 Hearing Log

RULES

R12-17-101. Petition of Modify Priorities.

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. §37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities listed in A.R.S. §37-1123(E).

R12-17-102. Computation of Time.

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

R12-17-103. Service of Documents.

When a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.

- a. Hand delivery with a receipt or certificate of delivery.
- b. Legible facsimile with confirmed receipt.
- c. Personal service, or
- d. By regular mail.

2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United State mail, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record.

R12-17-104. Notice of Appearance as a Party.

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing,
2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

R12-17-105. Evidence.

A. Submission of evidence.

1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable Stream Adjudication Commission, 1700 West Washington Street, Suite B-54, Phoenix, Arizona, 85007 on or before the published hearing date.
2. A person may submit evidence at the hearing for which the evidence is intended.
3. A person is not required to resubmit evidence previously submitted to the Commission before August 9, 2002, that relates to the navigability of a watercourse.
4. A person submitting evidence shall submit an original and seven copies

of the evidence.

a. The evidence shall, where practical, be printed on one side or 8½ x 11-inch paper.

b. For computer-generated presentations, such as PowerPoint, only paper printouts of the presentation slides are accepted.

5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and videotapes are the property of the Commission.

B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's expense, a copy of an item of evidence suitable for copying.

C. Objection to an item of evidence.

1. Any person may object to the admission or exclusion of an item of evidence by making the objection on the record at the public hearing at which the item of evidence is offered.

2. The Commission shall admit the evidence, decline the evidence, or take the matter under advisement for later determination.

D. Record keeping. The Commission shall maintain all relevant evidence submitted for each hearing.

R12-17-106. Hearings

A. Evidence.

1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.

2. The Presiding Officer shall announce the time for which evidence is no longer accepted for consideration.

B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.

C. A party may respond and present evidence and arguments on all relevant issues.

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by the consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

2. If any Commissioner objects to the ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.

D. The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, to avoid needless consumption of time, and to protect witnesses from harassment of undue embarrassment. The Presiding Officer shall determine:

1. The order in which a party will testify,
2. The time limit for testimony, if any, and
3. The order and duration a party may question a witness.

E. If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.

F. The Commission shall rule on any motion involving a matter of law or fact.

G. The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission.

H. Public participation.

1. The Commission shall provide an opportunity for public comment to any item on the meeting agenda.

2. The Presiding Officer may establish time limits for public comments.

3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing, or willfully refuses to comply with an order of the Presiding Officer.

R12-17-107. Hearing Record

A. The President Officer shall ensure that a record is created of the proceeding. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceedings. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.

B. A person may obtain a duplicate copy of an audiotape recording of a hearing by requesting a copy of the audiotape by providing the Commission with replacement blank audiotapes. The Commission will not provide a transcript of the hearing.

C. A person may obtain a copy of a court reporter's transcript by making arrangements directly with the court reporter.

R12-17-108. Legal Memoranda

A. Opening legal memoranda.

1. A party may file an opening legal memorandum with the Commission within 30 days, or as determined by the Presiding Officer, after conclusion of the hearing.

2. The party shall serve a copy of its opening legal memorandum upon all other parties to the hearings and shall file proof of service with the Commission.

3. Unless allowed by the Commission, an opening legal memorandum may not exceed 25 typewritten pages.

B. Response memoranda.

1. A party may file a response legal memorandum with the Commission within 20 days, or as determined by the Presiding Officer, after service of the opening legal memorandum.

2. The party shall serve a copy of its response legal memorandum upon all other parties appearing before the Commission at the hearing and shall file proof of service with the Commission.

3. Unless allowed by the Commission, a response legal memorandum may not exceed 15 typewritten pages.

Rule 12-17-109. Hearing to Identify Public Trust Values

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall, within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

Rule 12-17-110. Hearing Log

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing regarding a watercourse. The hearing log shall include:

1. The hearing number.
2. The name and date of the hearing.
3. The final determination date.
4. The commission report date; and
5. The county recording or close date.

RULES ANALYSIS

Rule 12-17-101 Petition to Modify Priorities

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for modifying priorities pertaining to holding hearings. This rule complies with the intended purpose.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years.

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison.

There is no economic, small business, or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rule.

There is no business competitiveness regarding this rule.

10. Status of the completion of action indicated in the previous five-year-review report.

There was no action contemplated in the previous five-year-review report.

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

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-102 Computation of Time

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for computing time for filing various legal documents including post hearing legal memorandums. This rule complies with the intended purpose.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

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The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-103 Service of Documents

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for service of documents to the Commission. This rule complies with the intended purpose.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

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The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-104 Notice of Appearance as a Party

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for appearing at the

hearings as a party to the proceedings. This rule complies with the intended purpose.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

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burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

There is no one regulated by the Commission and there is no regulatory objective to this rule.

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The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-105 Evidence

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for receiving and handling evidence. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions

contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years.

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison.

There is no economic, small business, or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rule.

There is no business competitiveness regarding this rule.

10. Status of the completion of action indicated in the previous five-year-review report.

There was no action contemplated in the previous five-year-review report.

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

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-106 Hearings

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for determining the conduct of hearings. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years.

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison.

There is no economic, small business, or consumer impact related to this rule.

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There is no business competitiveness regarding this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-107 Hearing Record

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S.§37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for creating a hearing record. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S.§37-1122, and utilizes the definitions contained in A.R.S.§37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

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The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years.

There have been no written criticisms of the rule received during the last five years.

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There is no economic, small business, or consumer impact related to this rule.

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There is no business competitiveness regarding this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-108 Legal Memoranda

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for parties filing legal memoranda. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years.

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison.

There is no economic, small business, or consumer impact related to this rule.

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There is no business competitiveness regarding this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-109 Hearing to Identify Public Trust Values

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide procedures for holding public trust value hearings. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S.§37-1122, and utilizes the definitions contained in A.R.S.§37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

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There have been no written criticisms of the rule received during the last five years.

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There is no economic, small business, or consumer impact related to this rule.

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There is no business competitiveness regarding this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

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The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-110 Hearing Log

1. Authorization of the rule by existing statute.

This Rule is authorized by A.R.S. §37-1122.

2. The purpose of the rule.

The purpose of the rule is to provide instructions for maintaining a Hearing Log of all Cases considered by the Commission. The rule complies with the intended procedures.

3. Analyses of effectiveness in achieving the objective.

This rule is effective in achieving its purpose.

4. Analysis of consistency with the state and federal statutes and rules.

This rule is consistent with A.R.S. §37-1122, and utilizes the definitions contained in A.R.S. §37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule.

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability.

The rule is clear, concise, and understandable.

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objective.

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12. Analysis of the stringency compared to federal laws of this rule.

The rule is not more stringent than federal laws.

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

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action.

The Commission does not plan to amend the rule until a substantive issue arises.

Arizona Navigable Stream Adjudication Commission
Rules Matrix October 2020

Rule Number	Rule Title	Proposed Rule Action		
		No Change	Amend	Repeal
12-17-101	Petition to Modify Priorities	X		
12-17-102	Computation of Time	X		
12-17-103	Service of Documents	X		
12-17-104	Notice of Appearance as a Party	X		
12-17-105	Evidence	X		
12-17-106	Hearings	X		
12-17-107	Hearing Record	X		
12-17-108	Legal Memoranda	X		
12-17-109	Hearing to Identify Public Trust Values	X		
12-17-110	Hearing Log	X		

Commission Members

Wade Noble, Chair

Jim Horton, Member

Bill Allen, Member

Vacant, Member

Vacant, Member

ANSAC Staff

George Mehnert, Director

Matthew Rojas, Legal Counsel

Research Analyst, Vacant

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1700 West Washington, Suite B-54

Phoenix, Arizona, 85007

Phone (602) 542-9214

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TITLE 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

Editor's Note: 12 A.A.C. 17 consists of new rules for the Arizona Navigable Stream Adjudication Commission that were made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

Editor's Note: 12 A.A.C. 17, which formerly contained the rules of the Arizona Navigable Streambed Adjudication Commission, expired under A.R.S. § 41-1056(E) at 9 A.A.C. 4135, effective July 31, 2003. The rescinded Chapter is on file in the Office of the Secretary of State (Supp. 03-3).

ARTICLE 1. HEARINGS

Article 1, consisting of R12-17-101 through R12-17-110, made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

Section

R12-17-101.	Petition to Modify Priorities
R12-17-102.	Computation of Time
R12-17-103.	Service of Documents
R12-17-104.	Notice of Appearance as a Party
R12-17-105.	Evidence
R12-17-106.	Hearings
R12-17-107.	Hearing Record
R12-17-108.	Legal Memoranda
R12-17-109.	Hearing to Identify Public Trust Values
R12-17-110.	Hearing Log

ARTICLE 1. HEARINGS

R12-17-101. Petition to Modify Priorities

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities set in accordance with A.R.S. § 37-1123(E).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-102. Computation of Time

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-103. Service of Documents

If a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.
 - a. Hand delivery with receipt or certificate of delivery,
 - b. Legible facsimile with confirmed receipt,
 - c. Personal service, or
 - d. Regular mail.
2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the person being served at the last known address of record.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-104. Notice of Appearance as a Party

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing,

2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-105. Evidence

- A. Submission of evidence.
 1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable Stream Adjudication Commission, 1700 West Washington, Suite 304, Phoenix, Arizona 85007, on or before the published hearing date.
 2. A person may submit evidence relevant to a matter that is being heard.
 3. A person is not required to resubmit evidence previously submitted to the Commission before August 9, 2002 that relates to the navigability of a particular watercourse.
 4. A person submitting evidence shall submit an original and seven copies of the evidence.
 - a. The evidence shall, where practical, be printed on one side of 8 1/2 x 11-inch paper.
 - b. For computer-generated presentations, such as PowerPoint, only paper printouts of the presentation slides are accepted.
 5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and videotapes are the property of the Commission.
- B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's expense, a copy of any item that can be copied.
- C. Objection to an item of evidence.
 1. Any person may object to the admission or exclusion of an item of evidence by making the objection on the record at the public hearing at which the item of evidence is offered.
 2. The Commission shall admit the evidence, exclude the evidence, or take the matter under advisement for later determination.
- D. Recordkeeping. The Commission shall maintain a permanent record for all relevant evidence submitted for each hearing.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-106. Hearings

- A. Evidence.
 1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
 2. At the beginning of the hearing, the Presiding Officer shall announce the time when evidence will no longer be accepted for consideration.
- B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.
- C. A party may respond and present evidence and arguments on all relevant issues.

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice; confusion of the issues; or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
 2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.
- D.** The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:
1. The order in which parties will testify,
 2. The time limit for testimony, if any, and
 3. The order and duration of questions that a party may ask a witness.
- E.** If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.
- F.** The Commission shall, as a whole, rule on any motion involving a matter of law or fact.
- G.** The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission.
- H.** Public participation.
1. The Commission shall provide an opportunity for public comment regarding any item on the hearing agenda.
 2. The Presiding Officer may establish time limits for public comments.
 3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing or willfully refuses to comply with an order of the Presiding Officer.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
3300, effective October 1, 2005 (Supp. 05-3).

R12-17-107. Hearing Record

- A.** The Presiding Officer shall ensure that a record of the proceeding is created. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceeding. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.
- B.** A person may obtain a copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with a blank audiotape.
- C.** A person may obtain a copy of a court reporter's transcript by making copying arrangements directly with the court reporter.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
3300, effective October 1, 2005 (Supp. 05-3).

R12-17-108. Legal Memoranda

- A.** Opening legal memoranda.
1. A party may file an opening legal memorandum with the Commission within 30 days, or within another reasonable period of time after conclusion of the hearing, as determined by the Presiding Officer.
 2. The party shall serve a copy of the opening legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
 3. Unless allowed by the Commission, a party shall not submit an opening legal memorandum that exceeds 25 pages.
- B.** Response memoranda.
1. A party may file a response legal memorandum with the Commission within 20 days, or within another reasonable period of time after service of the opening legal memorandum, as determined by the Presiding Officer.
 2. The party shall serve a copy of the response legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
 3. Unless allowed by the Commission, a party shall not submit a response legal memorandum that exceeds 15 pages.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
3300, effective October 1, 2005 (Supp. 05-3).

R12-17-109. Hearing to Identify Public Trust Values

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall, within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
3300, effective October 1, 2005 (Supp. 05-3).

R12-17-110. Hearing Log

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing regarding a particular watercourse. The hearing log shall include:

1. The hearing number,
2. The name and date of the hearing,
3. The final determination date,
4. The Commission report date; and
5. The county recording or close date.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
3300, effective October 1, 2005 (Supp. 05-3).

37-1122. General powers and duties of the commission

A. The commission shall:

1. Adopt administrative rules that in its discretion it considers to be necessary and proper to carry out the provisions and purposes of this chapter.
2. Assemble and distribute information to the public relating to the commission's determination of navigability or nonnavigability of any watercourse and the commission's other activities.
3. Conduct inquiries or hearings in performing the commission's powers and duties. The commission shall conduct its proceedings informally without adherence to judicial rules of procedure or evidence. The commission shall facilitate participation by persons who are not represented by legal counsel and shall not require a person to file documents or notices in order to be heard and participate in proceedings before the commission.
4. Exercise such other powers as may be necessary to fully carry out its responsibilities imposed by this chapter.

B. The commission may employ subject to title 41, chapter 4, article 4 or contract for legal counsel, independent from the attorney general, and other professional and administrative services. Legal counsel retained by the commission may advise and represent the commission in connection with legal matters before other departments and agencies of this state and represent the commission in litigation concerning the affairs of the commission. Contracts for legal and professional services are exempt from section 41-192 and title 41, chapter 23.

NATUROPATHIC PHYSICIANS MEDICAL BOARD
Title 4, Chapter 18, Article 6, Naturopathic Medical Assistants



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2020

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

FROM: Council Staff

DATE: December 7, 2020

SUBJECT: **Naturopathic Physicians Medical Board**
Title 4, Chapter 18, Article 6

This Five-Year-Review Report (5YRR) from the Naturopathic Physicians Medical Board relates to rules in Title 4, Chapter 18, Article 6, regarding Naturopathic Medical Assistants.

In the last 5YRR of these rules the Board proposed to amend R14-18-605(A)(7)(e) and remove "Massage Therapy" as a type of physiotherapy a Naturopathic medical assistant may perform. The Board, further explained in the report, did not complete the proposed changes because doing so would impact the Naturopathic Medical Assistants ability to perform duties similar to medical assistants associated with other professions.

Proposed Action

The Board is proposing to amend one of its rules, R4-18-603(1) to improve overall clarity, conciseness, and consistency with other rules and statutes. The Board plans to complete a rulemaking by September 2021.

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

Yes, the Board cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board regulates the licensing and requirements for naturopathic physicians and assistants. The Board has determined the economic impact of the rules do not differ significantly from what was determined in the previous 5 year review report.

The stakeholders include: The Board, naturopathic physicians, naturopathic medical assistants, patients of naturopathic physicians and medical assistants, and the general public.

The Board is economically impacted by reviewing applications, and processing the fees associated with those applications and license renewals. The medical assistants are impacted by paying the application cost of \$100, or the renewal cost of \$150, with an additional fee of \$75 if they are renewing their license late. Businesses or practices that hire certified naturopathic medical assistants benefit economically by having the medical assistant perform certain tasks that a physician would normally perform, without having to pay the higher salary of the physician.

Patients of businesses or practices who employ certified naturopathic medical assistants benefit from being able to potentially spend more time with their naturopathic physician. Naturopathic physicians also benefit from certified naturopathic medical assistants performing certain tasks, freeing up their time and allowing them more time with their patients.

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

The Department has determined the rules are the least costly method of achieving the underlying regulatory objective. The Board has determined that while the medical assistants bear a minimal cost burden, this cost is outweighed by the benefits to businesses and patients, who can be certain the medical assistant meets minimal competencies required for licensure.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are clear, concise, and understandable.

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

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board indicates the rules are enforced as written.

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

Not applicable. The Board indicates there are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

11. **Conclusion**

As indicated above the Board is proposing to amend one of its rules to improve clarity, conciseness and consistency with other rules and statutes. The Board plans to complete the changes by September 2021.

Council Staff recommends approval of this report.



State Of Arizona
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1740 W. Adams, Ste. 3002 Phoenix, AZ 85007
Phone: 602-542-8242, Email: info@nd.az.gov Website nd.az.gov
Douglas A. Ducey - Governor

October 16, 2020

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: State of Arizona Naturopathic Physicians Medical Board Report for A.A.C. Title 4, Chapter 18, Article 6

Dear Ms. Nicole Sornsin:

Please find enclosed the Five Year Review Report of The State of Arizona Naturopathic Physicians Medical Board for A.A.C. Title 4, Chapter 18, Article 6 which is due on 10/28/2020.

The State of Arizona Naturopathic Physicians Medical Board hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Gail Anthony at 602 542-8242 or Gail.anthony@nd.az.gov

Sincerely,

A handwritten signature in black ink that reads "Gail Anthony".

Gail Anthony, Executive Director

**STATE OF ARIZONA
NATUROPATHIC PHYSICIANS MEDICAL BOARD**

FIVE-YEAR-REVIEW REPORT

**TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD
ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS**

October 2020

FIVE-YEAR-REVIEW SUMMARY

Statutory Authority

The Naturopathic Physicians Medical Board (Board) is statutorily vested with the duty to issue licenses and certificates to applicants who are qualified. A.R.S. § 32-1526. A.R.S. § 32-1504(A)(1) requires the Board to “adopt rules that are necessary or proper for the administration of this chapter.” A.R.S. § 32-1504(A)(2) requires the Board to administer and enforce A.R.S. § 32-1501 *et seq.* and rules adopted by the Board. A.R.S. § 32-1504(A)(3) requires the Board to “adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine”. A.R.S. § 32-1559 sets out basic procedures a naturopathic medical assistant is authorized to perform under the supervision of a licensed naturopathic medical doctor in the State of Arizona. Statute also allows the Board to prescribe by rule, medical treatments and procedures a naturopathic medical assistant may perform under the direct supervision of the naturopathic doctor. The application requirements for a naturopathic medical assistant are found in A.R.S. § 32-1524. A naturopathic medical assistant is required to renew a certificate each year, according to A.R.S. § 32-1526(D). According to A.R.S. § 32-1526(G), a naturopathic medical assistant who fails to renew a certificate by the due date shall pay a late renewal fee as prescribed in A.R.S. §32-1527. Further, the certificate “automatically expires if not renewed within sixty days after the due date.” A.R.S. § 32-1559(E) states it is unlawful for a person to “use the title medical assistant or a related abbreviation unless that person is working as a naturopathic medical assistant pursuant to this section.” A.R.S. §32-1526 (H) states “the Board may reinstate a license or certificate on payment of all renewal and penalty fees.

1. Authorization of the rule by existing statute

All of the rules have general statutory authority in A.R.S. § 32-1504(A)(1) and A.R.S. § 32-1504(A)(2). Specific statutory authority is as stated in each rule.

2. **The objective of each rule**

Rule	Objective
R4-18-601	The definitions in this rule apply to Article 6. and in addition to applicable definitions found in A.R.S. § 32-1501 and R4-18-101. The objective is to provide clarity regarding specific terms as they apply to this Article.
R4-18-602	To specify the required level of education a naturopathic medical assistant must obtain in order to be granted certification.
R4-18-603	To specify the requirements of an application for naturopathic medical assistant certification.
R4-18-604	To specify the requirements of an application for renewal of a medical assistant certification.
R4-18-605	To specify authorized procedures naturopathic medical assistants may perform under the direct supervision of a physician. And additionally, specifies procedures not authorized to be performed by a naturopathic medical assistant.

3. **Are the rules effective in achieving their objective?**

Yes

4. **Are the rules consistent with other rules and statutes?**

Yes

5. **Are the rules enforced as written?**

Yes

6. **Are the rules clear, conciseness, and understandability?**

Yes

7. **Has the agency received written criticisms of the rule received within the last 5 years**

No

8. **Has the agency performed an economic, small business and consumer impact comparison**

In this comparison, minimal means less than \$1,000, moderate means between \$1,000 and \$10,000, and substantial means greater than \$10,000.

The Board made rules in Articles 6 that became effective on June 4, 2005. The Board has attached the economic impact statement (EIS) related to the rulemaking that was approved by GRRC at the time of the rulemaking, and have not changed since that time, with the exception of the number of current certified medical assistants, and the fees have changed slightly. As anticipated by the Board upon promulgation of the rules, the rules have had minimal economic impact on the Board, physicians, and consumers of naturopathic services. The average number of medical assistants certified by the Board has been 13 over the last 5 years. Currently, the Board certifies only 13.

The cost for an applicant to obtain a certificate or certificate holder to renew a certificate is minimal. The Board charges an initial application fee of \$100.00, and does not charge for issuance of the certificate. The Board does charge a renewal fee according to R4-18-107(C)(3) per A.R.S. 32-1527(A)(6). The current renewal fee for the certificate is \$150.00 due by July 1st of each year. In the event a naturopathic medical assistant renews the certificate within 60 days after the due date, an additional late fee of \$75.00 is required.

As a requirement to obtain certification as a naturopathic medical assistant, an applicant must graduate from an approved medical assistant program. The Board considers the medical assistant program approved if the course of study is provided at an institution accredited by the Commission on Accreditation of Allied Health Education Programs, the Commission for the Accrediting Bureau of Health Education Schools, or an accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States or by an organization recognized by the American Association of Naturopathic Physicians. The cost of a medical assistant program ranges from minimal to moderate.

Businesses, including small businesses that hire naturopathic medical assistants, benefit from rules that state the minimum competencies a naturopathic medical assistant must meet and the tasks that may be performed by them.

Consumers benefit from the services provided by a naturopathic medical assistant because naturopathic physicians are able to spend more time with patients.

9. Has the agency received any business competitiveness analyses of the rules

No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

No.

The following was identified in the 2015, 5 year review report as potential action.

Under R4-18-605(A)(7)(e),; the Board proposed the removal of "Massage Therapy"; reasoning the State of Arizona requires a license to practice massage in order to provide hands on massage therapy.

However after further review, it was determined identical language appears in the rules regarding Osteopathic Medical Assistants R4-22-402 B(1), and M.D. medical assistants under R4-16-402 (5). Massage therapy by use of a mechanical device is considered a Physical Medicine modality, may be included in medical assistant training, and would not require Licensure as a massage therapist to perform. Additionally, Pursuant to A.R.S. 32-1501(21), the definition of Medical Assistant, or naturopathic medical assistant, specifies the certified assistant may perform delegated procedure that are commensurate with the assistant's education and training, and only under the direct supervision of the supervising naturopathic physician. Moving forward with the removal of Massage Therapy in our rules, would impact the Naturopathic Medical Assistants ability to perform duties similar to medical assistants associated with other professions, while the same level of training is required. With this in mind, the Board has not proceeded with this change.

Under R4-18-603(1), striking "signed and dated" inserting "verified", and adding (g) the ability to collect public benefits statement, as required pursuant to A.R.S. § 41-1080.

Because these changes are minimal, the Board has not moved forward, but agree to include them in the next rule making process which may also include possible changes to other articles relating directly to the Naturopathic Physicians Medical Board.

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

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws?

The rules are not related to federal laws.

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

The rules were made prior to July 29, 2010.

14. Proposed course of action

Under R4-18-603(1), striking "signed and dated" inserting "verified", and adding (g) the ability to collect public benefits statement, as required pursuant to A.R.S. § 41-1080.

The Board has not identified any other potential changes under this Article. The Board would like to complete this action by September of 2021.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

(Authority: A.R.S. § 32-1501 et seq.)

Editor's Note: Laws 2008, 2nd Regular Session, Ch. 16 provided for a name change of the Naturopathic Physicians Board of Medical Examiners to Naturopathic Physicians Medical Board (Supp. 12-2).

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-3).

Editor's Note: This Chapter contains rules which were adopted under exemptions from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(25). Exemption from A.R.S. Title 41, Chapter 6 means that the Naturopathic Physicians Board of Medical Examiners did not submit these rules to the Governor's Regulatory Review Council for review; the Board did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Board was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Editor's Note: This Chapter has been reprinted due to an error in publishing text that was thought to be adopted and certified but in fact was rejected by the Attorney General on December 29, 1995 (Supp. 95-4). Text removed includes amendments made to R4-18-101 and adoption of Article 2, consisting of Sections R4-18-201 through R4-18-205. Removal of this text reflects the latest effective rules on file with the Office of the Secretary of State last modified Supp. 88-4 (reprinted Supp. 96-4).

Laws 1982, 6th S.S., Chs. 1 and 4 provided for a name change of the Naturopathic Board of Examiners to Naturopathic Physicians Board of Examiners.

ARTICLE 1. GENERAL PROVISIONS

Article 1 consisting of Sections R4-18-101, R4-18-102, R4-18-104, R4-18-106 through R4-18-111, R4-18-116 and R4-18-117 adopted effective December 31, 1984.

Former Article 1 consisting of Sections R4-18-01 through R4-18-07 repealed effective December 31, 1984.

Section

R4-18-101.	Definitions
R4-18-102.	Board Meetings; Elections; Officers
R4-18-103.	Duties of Board Committees
R4-18-104.	Repealed
R4-18-105.	Reserved
R4-18-106.	Rehearing or Review of Decision
R4-18-107.	Fees
R4-18-108.	Titles, Use of Abbreviations
R4-18-109.	Repealed
R4-18-110.	Display of Licenses and Certificates; Notice of Change of Status; Student Identification
R4-18-111.	Notice of Civil and Criminal Actions
R4-18-112.	Reserved
R4-18-113.	Reserved
R4-18-114.	Reserved
R4-18-115.	Reserved
R4-18-116.	Repealed
R4-18-117.	Repealed

ARTICLE 2. LICENSES; SPECIALIST CERTIFICATES; CONTINUING MEDICAL EDUCATION; RENEWAL

New Article 2, consisting of Sections R4-18-201 through R4-18-206, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Article 2 consisting of Sections R4-18-201 through R4-18-205 has been deleted due to an error in publishing text that was thought to be adopted and certified but in fact was rejected by the Attorney General on December 29, 1995 (Supp. 95-4). Removal of this text reflects the latest effective rules on file with the Office of the Secretary of State last modified Supp. 88-4 (reprinted Supp. 96-4).

Section

R4-18-201.	Jurisprudence Examinations
R4-18-202.	License by Examination
R4-18-203.	License by Endorsement
R4-18-204.	Specialist Certificate
R4-18-205.	Continuing Medical Education Requirements

R4-18-206.	Renewal of a License
R4-18-207.	Reinstatement of an Expired License or Certificate
R4-18-208.	Reinstatement of a Retired License
R4-18-209.	Reinstatement of a Suspended, Revoked or Surrendered License or Certificate

ARTICLE 3. RESERVED

ARTICLE 4. APPROVAL OF SCHOOLS OF NATUROPATHIC MEDICINE

New Article 4, consisting of Sections R4-18-401 and R4-18-402, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

R4-18-401.	Approval of a School of Naturopathic Medicine
R4-18-402.	Annual Renewal of an Approved School of Naturopathic Medicine

ARTICLE 5. NATUROPATHIC CLINICAL TRAINING AND PRECEPTORSHIP TRAINING PROGRAM REQUIREMENTS

New Article 5, consisting of Sections R4-18-501 through R4-18-504, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

R4-18-501.	Certificate to Engage in Clinical or Preceptorship Training
R4-18-502.	Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training
R4-18-503.	Application for a Certificate to Conduct a Clinical or Preceptorship Training Program
R4-18-504.	Annual Renewal of a Certificate to Conduct a Clinical or Preceptorship Training Program

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

New Article 6, consisting of Sections R4-18-601 through R4-18-605, made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-601.	Definitions
R4-18-602.	Medical Assistant Qualification
R4-18-603.	Application for Medical Assistant Certification
R4-18-604.	Renewal of Medical Assistant Certificate
R4-18-605.	Authorized Procedures for Medical Assistants

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

New Article 7, consisting of Sections R4-18-701 and Table 1, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

R4-18-701. Time-frames for Board Decisions

Table 1. Time-frames

ARTICLE 8. EXPERIMENTAL MEDICINE

New Article 8, consisting of Sections R4-18-801 and R4-18-802, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

R4-18-801. Experimental Medicine

R4-18-802. Informed Consent and Duty to Follow Protocols

ARTICLE 9. CERTIFICATE TO DISPENSE

New Article 9, consisting of Sections R4-18-901 through R4-18-904, made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

Section

R4-18-901. Definitions

R4-18-902. Qualifications for a Certificate to Dispense

R4-18-903. Application for a Certificate to Dispense; Renewal

R4-18-904. Dispensing; Intravenous Nutrients

ARTICLE 1. GENERAL PROVISIONS**R4-18-101. Definitions**

In addition to the definitions in A.R.S. §§ 32-1501 through 32-1581, the following definitions apply to this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an applicant has provided, or caused to be provided, all of the application packet information and documentation required by statute or rule for an application for a license or a certificate.
2. "Applicant" means a person requesting from the Board an initial, temporary, or renewal license or certificate.
3. "Approved Specialty College or Program" means a post-doctoral training program that awards a medical specialist certificate, and is certified by a Specialty Board of Examiners, The American Association of Naturopathic Physicians ("AANP") or another professional association or, another state's licensing agency, and which is recognized by the Board.
4. "Chief medical officer" means a physician who is responsible for a clinical, preceptorship, internship, or postdoctoral training program's compliance with state and federal laws, rules, and regulations.
5. "Continuing medical education" or "CME" means courses, seminars, lectures, programs, conferences, and workshops related to subjects listed in A.R.S. § 32-1525(B), that are offered or sanctioned by one of the organizations referenced in R4-18-205(B).
6. "Device" means the same as in A.R.S. § 32-1581(H)(1).
7. "Endorsement" means the procedure for granting a license in this state to an applicant who is currently licensed to practice naturopathic medicine by another state, district, or territory of the United States or by a foreign country that requires a written examination substantially equivalent to the written examination provided for in A.R.S. § 32-1525.
8. "Facility" means a health care institution as defined in A.R.S. § 36-401, office or clinic maintained by a health care institution or by an individual licensed under A.R.S. Title 32, Chapter 13, 14, 17, or 29, office or public health

clinic maintained by a state or county, office or clinic operated by a qualifying community health center under A.R.S. § 36-2907.06, or an office or clinic operated by a corporation, association, partnership, or company authorized to do business in Arizona under A.R.S. Title 10.

9. "Informed consent" means a document, signed by a patient or the patient's legal guardian, which contains the information in R4-18-802(A)(1), (A)(2), and (A)(3).
10. "Institutional review board" means a group of persons that is approved according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection, which reviews investigational or experimental protocols and approves their use on animals or humans for the purposes of protecting the subjects of the investigational or experimental protocol from undue harm and assures that the research and its review is carried out according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection.
11. "Internship" means clinical and didactic training by a doctor of naturopathic medicine certified by the Board according to A.R.S. § 32-1561.
12. "License" means a document issued by the Board that authorizes the individual to whom it is issued to practice naturopathic medicine.
13. "Medical student" means naturopathic medical student defined in A.R.S. § 32-1501(24).
14. "Medication" means the same as drug defined in A.R.S. § 32-1501(15) or natural substance defined in A.R.S. § 32-1501(23).
15. "National board" means any of the following:
 - a. The Federation of State Medical Licensing Boards,
 - b. The National Board of Chiropractic Examiners,
 - c. The National Board of Medical Examiners,
 - d. The National Board of Osteopathic Examiners, or
 - e. The North American Board of Naturopathic Examiners.
16. "Procedure" means an activity directed at or performed on an individual for improving health, treating disease or injury, or making a diagnosis.
17. "Protocol" means an explicit detailed plan of an experimental medical procedure or test that is approved by an institutional review board.
18. "Resident physician in training" means a person who holds a degree of doctor of naturopathic medicine and is certified by the Board to diagnose and treat patients under supervision in an internship, preceptorship, or a post doctoral training program.
19. "Substantive review" means the Board's process for determining whether an applicant for licensure, certification, or approval meets the requirements of A.R.S. Title 32, Chapter 14 and this Chapter.
20. "Verified" means a notarized form dated, and signed by the applicant, affirming the information provided in the application, including any accompanying documents submitted by or on behalf of the applicant, is true and complete.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6).
Amended effective December 29, 1995 (Supp. 95-4).
Amended Section corrected Supp. 96-4 to reflect adopted Section on file with the Office of the Secretary of State effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-102. Board Meetings; Elections; Officers

- A.** The Board shall hold a regular meeting in January and July of each year. The officers shall be elected at the January meeting of the Board by majority vote of the Board members present at that meeting. The Board chairman shall preside at all Board meetings. If the chairman is disqualified or unable to attend, the Board vice-chairman shall preside at the meeting. If the Board vice-chairman is disqualified or unable to attend, the Board secretary-treasurer shall preside at the meeting.
- B.** If an officer's position becomes vacant, the Board shall elect a member of the Board to complete the term of office that is vacant.
- C.** A Board member shall attend meetings scheduled by the Board. The Board may recommend to the Governor that a Board member who fails to attend three consecutive Board meetings be removed from the Board.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6).
Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-103. Duties of Board Committees

A committee appointed by the Board chairman shall make a report to the Board based on the findings or investigations of the committee and may make recommendations for further action by the Board.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-104. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6).
Amended by adding a new subsection (H) effective June 18, 1987 (Supp. 87-2). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-105. Reserved

R4-18-106. Rehearing or Review of Decision

- A.** Except as provided in subsection (G), any party who is aggrieved by a decision issued by the Board may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review. For purposes of this Section, a decision is considered served when personally delivered or five days after mailing by certified mail to the party at the party's last known residence or place of business.
- B.** A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issue raised in the motion and may provide for oral argument.
- C.** A rehearing or review of a decision may be granted by the Board for any of the following reasons materially affecting the party's rights:
1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board or an administrative law judge;

3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
7. That the findings of fact or decision is not justified by the evidence, or is contrary to law.

- D.** The Board may affirm or modify its decision or grant a rehearing or review, to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.
- E.** Not later than 35 days after the date a decision is rendered, the Board may, on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. In either case, the order shall specify the grounds for rehearing and review.
- F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for good cause.
- G.** If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the 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, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(25). Exemption from A.R.S. Title 41, Chapter 6 means the Board did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Board did not submit the rules to the Governor's Regulatory Review Council for review; and the Board was not required to hold public hearings on this Section (Supp. 99-3).

R4-18-107. Fees

- A.** Application fees are as follows:
1. Medical license, \$225
 2. Certificate to dispense, \$225
 3. Medical assistant certificate, \$100
 4. Clinical training certificate, \$100
 5. Preceptorship certificate, \$100
 6. Specialty certificate, \$225
- B.** Arizona naturopathic jurisprudence examination, \$60
- C.** Annual renewal fees are as follows:
1. Medical license, \$165

2. Certificate to dispense, \$225
 3. Medical assistant certificate, \$150
 4. Clinical training certificate, \$225
 5. Preceptorship certificate, \$225
 6. Renewal of specialty certificate, \$225
- D.** Late renewal fees are as follows:
1. Medical license, \$83
 2. Certificate to dispense, \$113
 3. Medical assistant certificate, \$75
 4. Clinical training certificate, \$113
 5. Preceptorship certificate, \$113
 6. Specialty certificate, \$113
- E.** Other fees are as follows:
1. For a duplicate license or certificate, \$20
 2. For photocopying Board records, documents, letters, applications, or files, \$5 or \$0.25 per page, whichever is greater
 3. For each audio tape or computer disk containing information requested, \$25
 4. For written verification of a license or certificate, \$5
 5. For the costs in locating a person who is licensed or certified, actual cost incurred by the Board
 6. For each insufficient fund check, \$25

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended as an emergency effective December 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as a permanent rule effective June 18, 1987 (Supp. 87-2). Amended paragraph (3) effective November 10, 1988 (Supp. 88-4). Section repealed; new Section adopted by exempt rulemaking at 5 A.A.R. 2874, effective July 28, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by exempt rulemaking at 18 A.A.R. 1499, effective June 6, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 1986, effective September 16, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-108. Titles, Use of Abbreviations

- A.** A physician issued a license by the Board may use any of the following titles or abbreviations:
1. Doctor of Naturopathic Medicine,
 2. N.M.D.,
 3. Doctor of Naturopathy,
 4. N.D.,
 5. Naturopath,
 6. Naturopathic Physician, or
 7. Naturopathic Medical Doctor.
- B.** A physician issued a license, or a graduate of a school approved by the Board, shall not use any of the following titles or abbreviations:
1. Doctor of medicine (naturopathic),
 2. M.D.(N.), or
 3. M.D.(naturopathic).
- C.** An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in preceptorship training shall use the designation “(Preceptee)” after any of the designations in subsection (A). The preceptee shall also ensure that any patient treated by the preceptee signs an informed consent treatment form stating clearly that the preceptee is undergoing training, is not licensed, and identifying the name of the supervising physician.
- D.** An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in

internship training shall use the designation “(Intern)” after any of the designations in subsection (A). The intern shall ensure that any patient treated by the intern signs an informed consent treatment form stating clearly that the intern is undergoing training, is not licensed and identifying the name of the supervising physician.

- E.** A person who is permanently retired under A.R.S. § 32-1528 may use any of the designations listed in subsection (A) if that person also uses the designation “(Retired)” after each designation.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-109. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-110. Display of Licenses and Certificates; Notice of Change of Status; Student Identification

- A.** Each person licensed by the Board shall display that license, or a Board issued duplicate in a conspicuous place in each location in which the person conducts regular and ongoing patient care activity.
- B.** A person, business, or institution regulated by the Board shall notify the Board of any change in the information provided to the Board concerning a license or certificate application or its renewal, including changes in name, address, place of practice, or actions taken against the licensee, for any reason, in any court or by any governmental regulatory body.
- C.** Each person certified by the Board to engage in clinical training shall wear an identification card issued by the approved naturopathic medical school conducting the training that clearly identifies the person as a student, at all times that the person is involved in clinical training. An approved school may keep all certificates to engage in clinical training issued by the Board at a central location of the primary training facility, if it is easily available for public viewing.
- D.** Each person, business, or institution that is issued a certificate by the Board shall display that certificate or a Board issued duplicate, in a conspicuous place at each location in which the person, business, or institution conducts regular and ongoing business activity.
- E.** All notice requirements under this rule shall be in writing and made within 30 days of change of status.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-111. Notice of Civil and Criminal Actions

- A.** A person licensed or certified by the Board shall, within 10 days of receipt, notify the Board of any notice, subpoena, summons, or receipt of complaint, whether civil or criminal, arising directly or indirectly out of the person’s conduct of the person’s professional activities.
- B.** To provide notice to the Board a person licensed or certified by the Board shall provide either a photocopy or facsimile copy of the notice or other service or a letter advising the Board of the nature of the cause of action allegations made, and the date, time, and place where appearance is required.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6).
Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-112. Reserved**R4-18-113. Reserved****R4-18-114. Reserved****R4-18-115. Reserved****R4-18-116. Repealed****Historical Note**

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-117. Repealed**Historical Note**

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

**ARTICLE 2. LICENSES; SPECIALIST CERTIFICATES;
CONTINUING MEDICAL EDUCATION; RENEWAL**

R4-18-201. Jurisprudence Examination

In addition to the requirements of R4-18-202 or R4-18-203, every applicant for licensure shall take and pass the Arizona Naturopathic Jurisprudence Examination, administered by the Board, with a minimum score of 75%. The examination shall consist of multiple-choice and true-false questions. If an applicant passes the jurisprudence examination to obtain a clinical training certificate under R4-18-501 and is under the continuous regulation of the Board after obtaining the clinical training certificate, the applicant is not required to take the examination again.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-202. License by Examination

In addition to the requirements of R4-18-201, an applicant for licensure by examination shall meet the requirements of A.R.S. Title 32, Chapter 14 and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified; and shall include the following information;
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The date applicant took and passed the required NPLEX examinations of Part I; Biomedical examination, Part II; Clinical Science examination, Part II; Core Clinical Science Examination, and the Clinical Elective examinations in acupuncture, and minor surgery. The date applicant took and passed the examination in Arizona naturopathic jurisprudence that is administered by the Board. Applicant

must have taken and passed all the required examinations within a five-year period immediately preceding the date of application submission to the Board;

- i. A list of all license or certificates issued or denied by any agency. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status, and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency;
 - l. Whether applicant has ever been disciplined by any agency for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States or country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A copy of the applicant's complete NPLEX examination record, to be sent directly to the Board by the North American Board of Naturopathic Examiners ("NABNE") or its successor;
 3. A complete transcript sent directly to the Board from the approved school of naturopathic medicine from which the applicant graduated. The transcript shall include the date of graduation and the date of completion of clinical training;
 4. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
 5. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, and;
 6. The fees specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-203. License by Endorsement

In addition to the requirements of R4-18-201, an applicant for licensure by endorsement shall meet the requirements of A.R.S. Title 32, Chapter 14, and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information;
 - a. Applicant's full name and any former names used by the applicant;
 - b. Place and date of birth;
 - c. Social Security number;
 - d. Home, business, and e-mail addresses;
 - e. Home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The date applicant took and passed the examination in Arizona naturopathic jurisprudence that is administered by the Board, and the required NPLEX examinations of Part I; Biomedical examination, Part II; Clinical Science examination, Part II; Core Clinical Science Examination, the Clinical Elective examination in acupuncture, and the Clinical Elective examination in minor surgery;
 - i. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status, and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law; in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A document submitted directly to the Board by the agency by whom the applicant is licensed as a naturopathic physician that is signed and dated by an official of the agency and that contains:
 - a. The applicant's name;
 - b. The date of issuance of the license;
 - c. The current status of the license;
 - d. A statement of whether the applicant has ever been denied a license by the agency, and;
 - e. A statement of whether any disciplinary action is pending or has ever been taken against the applicant;
3. A copy of the applicant's complete NPLEX examination record, to be sent directly to the Board by the North American Board of Naturopathic Examiners "NABNE" or its successor;
4. A complete transcript sent directly to the board from the approved school of naturopathic medicine from which the applicant graduated. The transcript shall include the date of graduation and the date of completion of clinical training.
5. Applicant must provide evidence of being actively engaged, for at least three years immediately preceding the application, in one or more of the following:
 - a. The active practice as a licensed doctor of naturopathic medicine;
 - b. Participation in an approved internship, preceptorship or clinical training program in naturopathic medicine, as defined in A.R.S. § 32-1501(4), (5), (7);
 - c. Participation in an approved postdoctoral training program in naturopathic medicine, as defined in A.R.S. § 32-1501(6);
 - d. Active in the resident study of naturopathic medicine at an approved school of naturopathic medicine, as defined in A.R.S. § 32-1501(8)(a) and (b);
6. A complete and legible fingerprint card, including the DPS processing fee, as specified on the application form;
7. A passport size photograph taken within 60 days prior to application submission, that is signed on the back by the applicant;
8. The fees specified in R4-18-107;
9. Applicants who were licensed in another state or a Canadian province before January 1, 2005, shall include evidence of completion of additional 60 hours of continuing medical education ("CME") in the subject of pharmacotherapeutics. The CME must be offered, sanctioned, or accredited by one of the organizations referenced in R4-18-205(B)(1), (2)(a), (b), (c) or (4)(a), (b), (c), and include an examination. In the event the applicant cannot provide satisfactory evidence of completion of the required pharmacotherapeutics, or the required examinations, pursuant to A.R.S. § 32-1524(E), and (G)(3), the applicant will have an additional 365 days from the date the board notifies the applicant of the deficiency, to supply satisfactory evidence of completion.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

Naturopathic Physicians Medical Board

R4-18-204. Specialists Certificate

To obtain a specialist certificate, a physician shall meet the requirements of A.R.S. Title 32, Chapter 14 and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information;
 - a. Applicant's full name;
 - b. Current State of Arizona Naturopathic Physicians Medical License number;
 - c. Email address, phone number, and mailing address;
 - d. Name and address of the approved specialty college or program from which applicant completed post-doctoral specialty training;
 - e. The specialty applicant received training in, and a copy of the certificate of completion received in the specialty;
 - f. Who the specialty program was approved by;
 - g. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine;
 - h. Whether applicant has ever been disciplined by any agency in any state or territory of the United States, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - i. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state or territory of the United States, and;
 - j. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. The fees specified in R4-18-107 and;
3. A letter from the specialty board that conducted the specialty examination verifying that the licensee is certified as a specialists in the specialty for which application is made;
4. A certificate issued to a physician pursuant to A.R.S. § 32-1529(C.), shall be concurrently renewed, suspended or revoked, with that physician's license to practice naturopathic medicine.
 - a. The American Association of Naturopathic Physicians or any of its constituent organizations,
 - b. The Arizona Naturopathic Medical Association, or
 - c. Any naturopathic licensing authority in the United States or Canada.
3. One credit hour may be claimed for each eight hour day of training in an internship training program, a preceptorship training program, or a postdoctoral training program approved by the Board. A maximum of eight hours per year may be claimed in this manner.
4. One credit hour, not to exceed eight credit hours, may be claimed for each eight hour day of research in subjects listed in A.R.S. § 32-1525(B), if the research is conducted by or sponsored by a school of naturopathic medicine that is accredited or a candidate for accreditation by:
 - a. The Council on Naturopathic Medical Education,
 - b. The Council for Higher Education Accreditation, or
 - c. An accrediting agency recognized by the United States Department of Education.
5. One credit hour may be claimed for each hour serving as an instructor of naturopathic medical students or other physicians in a program approved by one of the organizations listed in subsection (B)(2), or a school approved by the Board. A maximum of eight hours may be claimed in this manner.
6. A maximum of four credit hours may be claimed for preparing or writing for presentation or publication, a medically related paper, report, or book that is presented or published addressing current developments, skills, procedures, or treatment in the practice of naturopathic medicine. Credit may be claimed only for materials presented or published. Credit may be claimed once as of the date of publication or presentation.
7. A maximum of eight credit hours may be earned for the following activities that provide necessary understanding of current developments, skills, procedures, or treatment related to the practice of naturopathic medicine if the physician maintains a record for at least three years that includes the name of the activity, the date of the activity, and the amount of time to complete the activity:
 - a. Self-instruction that utilizes videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
 - b. Independent reading of scientific journals and books;
 - c. Preparation for specialty board certification or recertification examinations; or
 - d. Participation on a staff committee or quality of care or utilization review committee in a facility or government agency.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-205. Continuing Medical Education Requirements

- A. Every calendar year, a physician shall complete 30 credit hours of approved continuing medical education activities. Ten credit hours shall be in pharmacology as it relates to the diagnosis, treatment, or prevention of disease. Eight credit hours shall be from programs approved by one or more of the organizations listed in subsection (B)(2). One hour of credit is allowed for every 50 minutes of participation in an approved continuing medical education activity unless otherwise noted in R4-18-205(B).
- B. The following are approved continuing medical education activities:
 1. Education certified as Category I by an organization accredited by the Accreditation Council on Continuing Medical Education;
 2. Continuing medical educational programs in the clinical application of naturopathic medical philosophy that are approved by;
 - C. The Board shall grant an extension of time to complete continuing medical education required in subsection (A) upon written application by a licensee if the licensee fails to meet the requirements due to illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstance. An extension, other than for military service, shall not exceed 90 days.
 - D. An applicant for renewal of a license shall certify on the application for renewal, under penalty of perjury, that the applicant has met or will meet, before January 1, the continuing medical education requirements for the calendar year.
 - E. Board staff shall annually select a minimum of ten percent of the active licensees for an audit of required continuing medical education. Failure to complete the required continuing medical education is considered unprofessional conduct.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-206. Renewal of a License

To renew a license to practice naturopathic medicine, on or before January 1 of each year, a licensee shall submit a complete license application renewal form, that allows the Board to determine whether the applicant continues to meet the requirements of A.R.S. Title 32, Chapter 14. If an applicant makes a timely and complete application for renewal of the applicant's license, the physician may continue to practice until the application is approved or denied by the Board.

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information;
 - a. Applicant's full name;
 - b. Applicant's State of Arizona Naturopathic Physicians Medical License number and initial issuance date of the license;
 - c. Applicant's home, business, and choice of e-mail addresses, and choice of mailing address;
 - d. Applicant's home, business, and cell phone numbers;
 - e. Applicant's attestation of completion of the Continuing Medical Education credit hours required to renew the medical license;
 - f. A statement indicating whether, during the last 12 months, applicant was arrested, charged with, convicted of, or entered into a plea of no contest to any criminal act;
 - g. A statement indicating whether, during the last 12 months, applicant had any licensing agency or board, in any state, district or territory of the United States or another country, initiate or take any action against any license or certificate that is or was held;
 - h. A statement indicating whether, during the last 12 months, applicant entered into a consent agreement or stipulation with any agency in lieu of disciplinary action in any state, district or territory of the United States or another country;
 - i. A statement of whether during the last 12 months applicant was named in a malpractice suit;
 - j. A statement of whether applicant has a complaint currently pending before any agency, or court of law; in any state, district or territory of the United States or another country;
 - k. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
2. The fee specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-207. Reinstatement of an Expired License or Certificate

A. In order to reinstate an expired license, an applicant must meet the requirements in A.R.S. § 32-1526, and pay a renewal and penalty fee for each year the license has been expired. In addition, the applicant must demonstrate completion of 30 hours of continuing medical education for each year the license has been expired. The CME must cover clinical application of naturopathic medical philosophy, pharmacology, and be accredited by the Accreditation Council on Continuing Medi-

cal Education or approved by any of the programs listed in R4-18-201(B)(2).

B. The applicant must provide the Board with:

1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information;
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;
 - i. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - j. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - k. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - l. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - m. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - n. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever been found medically incompetent;
 - p. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - q. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - r. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;

3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant;
- C. An applicant for reinstatement of an expired certificate to dispense must complete the renewal application form and pay the renewal and late fees for each year the certificate has been expired;
- D. An applicant for reinstatement of a certificate to dispense must complete the initial application form for the certificate. Pursuant to A.R.S. § 32-1526(H), an applicant for reinstatement of an expired certificate shall pay all renewal and penalty fees;
- E. A applicant who held a specialty certificate that expired with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.
 - o. agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-208. Reinstatement of a Retired License

- A. A person may apply to reinstate a retired license to active practice, upon payment of the renewal fee. As a condition of reinstatement of a retired license, pursuant to A.R.S. § 32-1528, each applicant shall provide proof of completion of 30 hours of continuing medical education, and provide the Board with:
 1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information:
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The dates applicant retired the license;
 - i. A list of all licenses or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any
 2. A complete and legible fingerprint card, including the DPS processing fee as specified on the form;
 3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant;
 4. The fees specified in R4-18-107; and
 5. Provide proof of completion of 30 hours of CME taken, within the last 12 months prior to application submission. The CME is in addition to the 30 hours required each year for license renewal, must cover clinical application of naturopathic medical philosophy, pharmacology, and be accredited by the Accreditation Council on Continuing Education, or approved by any of the programs listed in R4-18-201(B)(2).
- B. An applicant for reinstatement of a retired certificate to dispense must complete the renewal application form for the certificate, and pay the fee specified in R4-18-107.
- C. An applicant who held a specialty certificate that retired with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-209. Reinstatement of a Suspended, Revoked, or Surrendered License or Certificate

- A. A person may apply to the board for the termination of the suspension or reissuance of a revoked license. Pursuant to A.R.S. § 32-1551, the board shall make its determination on each application as it deems consistent with the public health, safety and just in the circumstances. The applicant must provide the Board with:
 1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information:
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;

- h. Documentation showing that the basis for the suspension or revocation has been removed, and that suspension termination or reinstatement of the license or certificate, does not constitute a threat to the public health or safety;
 - i. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
 3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, and;
 4. The fees specified in R4-18-107;
 5. Proof of completion of 30 hours of CME for each year the license has been suspended or revoked. The CME is in addition to the 30 hours required each year for license renewal, must cover clinical application of naturopathic medical philosophy and pharmacology, and, be accredited by the Accreditation Council on Continuing Education, or approved by any of the programs listed in R4-18-205(B)(2);
- B. An applicant for reinstatement of a suspended or revoked certificate to dispense shall submit a complete renewal form, along with the fee specified in R4-18-107;
 - C. An applicant who held a specialty certificate that was suspended or revoked with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.
 - D. An applicant seeking licensure after the surrendered of a license or certificate must apply and meet the requirements as a new applicant.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

ARTICLE 3. RESERVED**ARTICLE 4. APPROVAL OF SCHOOLS OF NATUROPATHIC MEDICINE****R4-18-401. Approval of a School of Naturopathic Medicine**

The Board shall approve a school of naturopathic medicine if, in addition to the requirements of A.R.S. § 32-1501(8):

1. It is accredited or a candidate for accreditation by the Council on Naturopathic Medical Education, or its successor agency, and
2. It has complied with the requirements of the Arizona State Board of Private Post Secondary Education in A.R.S. Title 32, Chapter 30 and A.A.C. 4-39-101 through 4-39-603.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-402. Annual Renewal of an Approved School of Naturopathic Medicine

An approved school of naturopathic medicine shall be renewed by submitting on or before January 1 of each year, the information required by the Board that allows the Board to determine if the applicant continues to meet the requirements of A.R.S. § 32-1501(8) and of R4-18-401.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 5. NATUROPATHIC CLINICAL TRAINING AND PRECEPTORSHIP TRAINING PROGRAM REQUIREMENTS**R4-18-501. Certificate to Engage in Clinical or Preceptorship Training**

- A. To obtain a certificate to engage in clinical or preceptorship training, an applicant shall submit to the Board a complete application form provided by the Board, that allows the Board to determine if the applicant meets the requirements of A.R.S. § 32-1524. The application shall be verified, and include the fee listed in R4-18-107;
- B. In addition to the requirements in subsection (A) a naturopathic medical student who applies for a certificate to engage in clinical training shall comply with the requirements of A.R.S. § 32-1560, and, be attending an approved naturopathic medical school. Applicant must arrange to have submitted directly to the Board, a letter from the chief medical officer of the medical school verifying that the applicant will be entering clinical training, and the anticipated starting and completion dates. The Board may deny an application for any reason set forth in A.R.S. § 32-1501(31) and A.R.S. § 32-1522(A)(3) through (6);

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- C. Applicant must take and pass the examination in Arizona naturopathic jurisprudence that is administered by the Board, with a minimum score of 75%, include with the application a passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, provide a legible fingerprint card, including the DPS processing fee as specified on the application form;
- D. The application form for clinical training entry shall include:
1. Applicant's full name and any former names used by applicant;
 2. Applicant's place and date of birth;
 3. Applicant's Social Security number;
 4. Applicant's home and email address;
 5. Applicant's home and cell phone numbers;
 6. The name and address of the approved naturopathic college applicant is attending; name and address of clinical training program, the date of clinical entry and the date of completion of clinical entry;
 7. The name of the Supervising Physician and the name of the Chief Medical Officer of the Clinical Training program;
 8. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 9. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 10. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 11. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 12. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 13. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States or another country;
 14. Whether applicant has ever been found medically incompetent;
 15. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 16. Whether applicant has a medical condition, that in any way, impairs or limits applicant's ability to practice medicine;
 17. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background, and;
 18. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
- E. In addition to the requirements in subsection (A), an applicant for a certificate to engage in a preceptorship training program shall comply with the requirements of A.R.S. § 32-1561 and arrange to have submitted directly to the Board, an official transcript from the approved naturopathic medical school from which the applicant graduated;
- F. Applicant must take and pass the examination in Arizona naturopathic jurisprudence that is administered by the Board with a minimum score of 75%, include with the application, a passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, provide a legible fingerprint card, including the DPS processing fee as specified on the application form;
- G. The application form for preceptorship training shall include:
1. Applicant's full name and any former names used by applicant;
 2. Applicant's place and date of birth;
 3. Applicant's Social Security number;
 4. Applicant's home and email address;
 5. Applicant's home and cell phone numbers;
 6. The name, address, and medical license number of the Supervising Physician, designated Supervising Physician, if any, and Chief Medical Officer;
 7. Attestation signed by the Supervising Physician declaring they have read and understand A.R.S. § 32-1561 and R4-18-108, and agree to be the Supervising physician of record;
 8. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 9. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any state, district or territory of the United States or another country;
 10. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 11. Whether applicant, in lieu of disciplinary action by any agency, in any state, district or territory of the United States or another country, has entered into a consent agreement or stipulation with a licensing agency;
 12. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 13. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States, or another country;
 14. Whether applicant has ever been found medically incompetent;
 15. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 16. Whether applicant has a medical condition, that in any way, impairs or limits applicant's ability to practice medicine;
 17. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background, and
 18. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training

A holder of a certificate to engage in clinical training shall renew the certification by submitting before the expiration date of the certificate a completed clinical training renewal form. A holder of a certificate to engage in preceptorship training shall renew the certification on or before July 1, by submitting a completed preceptorship renewal form.

1. Applicant must submit a completed application form provided by the Board for renewal of certification that allows the Board to determine whether the holder of the certificate continues to meet the requirements of A.R.S. Title 32 Chapter 14. The form must be signed, dated, and shall include:
 - a. Applicant's full name and any former names used by applicant;
 - b. Applicant's certificate number, and original issue date;
2. The fees specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program

A chief medical officer applying on behalf of a school of naturopathic medicine for a certificate to conduct clinical training, or on behalf of a preceptorship training program, shall submit to the Board the fee indicated in R4-18-107 and an application form provided by the Board, signed and dated by the chief medical officer, that contains:

1. The chief medical officer's name, mailing address, and telephone number;
2. The name and address of the training program and of each facility where training will be conducted;
3. The name, professional degree, license number, and licensing agency for each physician who will be providing supervision in the training program; and
4. A mission statement outlining the goals of the training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-504. Annual Renewal of Certificate to Conduct a Clinical or Preceptorship Training Program

A certificate to conduct clinical or preceptorship training shall be renewed before the anniversary date, by submitting the appropriate fee listed in R4-18-107 and a completed form.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS**R4-18-601. Definitions**

In addition to the definitions in A.R.S. § 32-1501 and R4-18-101, the following definitions apply to this Article:

1. "Approved medical assistant program" means a course of study for medical assistants that is provided:
 - a. At an institution that is accredited by:
 - i. The Commission on Accreditation of Allied Health Education Programs,
 - ii. The Commission for the Accrediting Bureau of Health Education Schools, or

iii. An accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States, or

- b. By an organization recognized by the American Association of Naturopathic Physicians.
2. "Employ" means to compensate by money or other consideration for work performed.
3. "Medical history" means an account of an individual's past and present physical and mental health including the individual's illness, injury, or disease.
4. "Medication" means a drug as defined in A.R.S. § 32-1501 or a natural substance as defined in A.R.S. § 32-1581.
5. "Naturopathic practice" means a place where the practice of naturopathic medicine as defined in A.R.S. § 32-1501 takes place.
6. "Training" means classroom and clinical instruction completed by an individual as part of an approved medical assistant program.
7. "Treatment" means any of the acts included in the practice of naturopathic medicine as defined in A.R.S. § 32-1501.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-602. Medical Assistant Qualification

An individual shall complete an approved medical assistant program to qualify for certification as a medical assistant.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-603. Application for Medical Assistant Certification

An applicant for a medical assistant certificate shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:
 - a. The applicant's name, mailing address, telephone number, and Social Security number;
 - b. The applicant's date and place of birth;
 - c. The applicant's height, weight, and eye and hair color;
 - d. The name, address, and telephone number of the applicant's employer, if applicable;
 - e. The name of the licensed physician who will supervise the applicant;
 - f. The name and address of the institution where the applicant completed an approved medical assistant program;
2. A copy of a certificate of completion from an approved medical assistant program or a letter of completion from an approved medical assistant program signed by the person in charge of the approved medical assistant program;
3. A completed and legible fingerprint card; and
4. The fees required by the Board under A.R.S. § 32-1527.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-604. Renewal of Medical Assistant Certificate

An applicant for a renewal certificate shall submit to the Board:

1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains the applicant's:
 - a. Name,
 - b. Social Security number,

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- c. Residence and naturopathic practice addresses, and
 - d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1527.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-605. Authorized Procedures for Medical Assistants

- A.** A medical assistant may perform the following under the direct supervision of a physician:
1. Obtain a patient's medical history;
 2. Obtain a patient's vital signs;
 3. Assist a physician in performing a physical examination, surgical procedure, or treatment;
 4. Perform a diagnostic test ordered by a physician including:
 - a. An electrocardiogram;
 - b. A peripheral vein puncture;
 - c. A capillary puncture;
 - d. Urine analysis;
 - e. A hematology test; or
 - f. Respiratory function testing;
 5. Administer a medication:
 - a. By mouth; or
 - b. By subcutaneous or intra-muscular injection if the medical assistant received training on performing this type of administration from an approved medical assistant training program;
 6. Monitor and remove an intravenous administration of a medication established by a supervising physician if the medical assistant received training on monitoring and removing an intravenous administration from an approved medical assistant training program.
 7. Perform physiotherapy, which includes the following:
 - a. Whirlpool treatment,
 - b. Diathermy treatment,
 - c. Electronic stimulation treatment,
 - d. Ultrasound therapy,
 - e. Massage therapy,
 - f. Traction,
 - g. Transcutaneous nerve stimulation,
 - h. Colon hydrotherapy, or
 - i. Hot and cold pack treatment.
- B.** A medical assistant shall not:
1. Diagnose a medical condition;
 2. Design or modify a treatment program;
 3. Prescribe a medication or natural substance;
 4. Provide a patient with a prognosis;
 5. Unless authorized by law, perform:
 - a. An ionizing radiographic procedure,
 - b. A surgical procedure,
 - c. A central venous catheterization,
 - d. An acupuncture needle insertion, or
 - e. Manipulative therapy;
 6. Administer or establish an intravenous medication;
 7. Perform any procedure that requires precise placement of a needle into a patient by single or multiple injections including:
 - a. Sclerotherapy,
 - b. Prolotherapy,
 - c. Mesotherapy, or
 - d. Neurotherapy; or
 8. Employ the medical assistant's supervising physician or have any financial interest in a naturopathic practice where the supervising physician is employed.

- C.** While assisting a naturopathic physician or performing a procedure delegated to the medical assistant, the medical assistant shall wear a clearly visible tag that states the individual is a medical assistant.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS**R4-18-701. Time-frames for Board Decisions**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license, certification, or approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend a substantive review and overall time-frame by no more than 25 percent of the overall time-frame listed in Table 1.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license, certification, and approval granted by the Board is listed in Table 1.
1. The administrative completeness review time-frame begins on the day the Board receives the application form and the appropriate fee.
 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information.
 3. The administrative completeness review time-frame and the overall time-frame are suspended from the date on the Board's notice until the date the Board office receives all missing information.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license, certification, and approval granted by the Board is listed in Table 1.
1. The substantive review time-frame begins on the date of the Board's notice of administrative completeness.
 2. If the Board determines that additional information or documentation is required, the Board shall send to the applicant a written request for that additional information or documentation.
 3. The time-frame for the substantive review is suspended from the date the request for additional information or documentation is sent to the applicant, until the date on which all of the requested information is received.
 4. The Board shall notify the applicant of the dates of all Board meetings at which the application will be considered.
 5. The Board shall send a written notice of approval or denial to applicants within ten working days of the Board meeting at which the decision is made. An applicant may request a hearing on the decision within 30 days of the Board's action.
- D.** The Board shall consider an application withdrawn if within 360 days from the date of application the applicant fails to:
1. Supply the missing information requested under subsection (B)(2) or (C)(2); or
 2. If applicable, take and obtain a minimum score of 75% on the Arizona Naturopathic Jurisprudence Examination.
- E.** During the administrative review period, an applicant may withdraw an application by requesting withdrawal in writing. During the substantive review period, the Board shall decide whether to grant a request to withdraw.
- F.** An applicant shall send written notice to the Board within 10 days from the date of any change of applicant's address.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Table 1. Time-frames

Type of Approval	Statutory Authority	Administrative Completeness Time-frame	Substantive Review Time-frame	Overall Time-frame
License by Examination (R4-18-202)	A.R.S. §§ 32-1504(A), 32-1522, 32-1523, 32-1523.01, 32-1524	90 days	90 days	180 days
License by Endorsement (R4-18-203)	A.R.S. §§ 32-1504(A), 32-1523	60 days	60 days	120 days
Specialist Certificate (R4-18-204)	A.R.S. §§ 32-1504(B)(3), 32-1529	60 days	60 days	120 days
Annual Renewal of License (R4-18-206)	A.R.S. §§ 32-1504(A), 32-1526	30 days	60 days	90 days
Certificate to Dispense	A.R.S. §§ 32-1504(A), 32-1581	30 days	60 days	90 days
Annual Renewal of Certificate to Dispense	A.R.S. §§ 32-1504(A), 32-1581	30 days	60 days	90 days
Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-501)	A.R.S. §§ 32-1504(A), 32-1560, 32-1561	30 days	60 days	90 days
Annual Renewal of Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-502)	A.R.S. §§ 32-1504(A), 32-1560, 32-1561	30 days	60 days	90 days
Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-503)	A.R.S. §§ 32-1501, 32-1504(A)	30 days	60 days	90 days
Annual Renewal of Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-504)	A.R.S. § 32-1504(A)	30 days	60 days	90 days
Medical Assistant Certificate	A.R.S. §§ 32-1504(A), 32-1559	30 days	60 days	90 days
Annual Renewal of Medical Assistant Certificate	A.R.S. §§ 32-1504(A), 32-1559	30 days	60 days	90 days

Historical Note

New Table made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 8. EXPERIMENTAL MEDICINE

R4-18-801. Experimental Medicine

A procedure, medication, or device is experimental if:

1. An Institutional review board exists for a particular procedure, medication, or device;
2. The procedure, medication, or device is not generally considered to be within the accepted practice standards for the naturopathic profession; and
3. The procedure, medication, or device is not part of the curriculum at an approved school of naturopathic medicine or approved postdoctoral training.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-802. Informed Consent and Duty to Follow Protocols

A. A physician, medical student engaged in an approved clinical training program, preceptee, or intern who conducts research involving an experimental procedure, medication, or device,

shall ensure that all research subjects give informed consent to participate, which states:

1. Whether a physician, preceptee, or an intern is treating the patient;
2. That the patient or legal guardian of the patient understands:
 - a. The type of treatment the patient is to receive;
 - b. Each procedure that will be provided to the patient;
 - c. The risks and benefits of each procedure, medication, or device to be provided;
 - d. That the patient can withdraw at any time; and
 - e. That the patient is voluntarily participating; and
3. The physician, medical student engaged in the approved clinical training program, preceptee, or intern has established a protocol as required by subsection (B) that meets the requirements of the institutional review board that approved the protocol.

B. A physician, medical student engaged in an approved clinical training program, preceptee, or intern, who conducts research on humans involving an experimental procedure, medication,

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or device shall have a protocol for that research approved by an institutional review board.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

ARTICLE 9. CERTIFICATE TO DISPENSE**R4-18-901. Definitions**

The following definitions apply in this Article:

1. "Applicant" means:
 - a. An individual applying for a license and a certificate to dispense; or
 - b. A licensee requesting a certificate to dispense only.
2. "Auscultation" means the act of listening to sounds within the human body either directly or through the use of a stethoscope or other means.
3. "Certificate to dispense" means an approval granted by the Board to dispense a natural substance, drug, or device.
4. "Dispense" means the same as in A.R.S. § 32-1581(H).
5. "Drug" means the same as in A.R.S. § 32-1501(15).
6. "Hour" means 50 to 60 minutes of participation.
7. "Medical record" means the same as in A.R.S. § 12-2291.
8. "Nutrient" means the same as in A.R.S. § 32-1501(15)(a)(iii).
9. "Physical examination" means an evaluation of the health of an individual's body using inspection, palpation, percussion, and auscultation to determine cause of illness or disease.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-902. Qualifications for a Certificate to Dispense

- A. To qualify for a certificate to dispense, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of natural substances, drugs, or devices.
- B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of natural substances, drugs, or devices:
 1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. § 32-1525(B)(4); or
 2. Completion of a 60 hour or more pharmacological course on natural substances, drugs, or devices that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or R4-18-205(B)(2).
- C. If an applicant intends to administer a natural substance or drug intravenously, the Board approved training completed by the applicant shall include administration of a natural substance or drug by intravenous means.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-903. Application for a Certificate to Dispense; Renewal

- A. An applicant for a certificate to dispense shall submit:
 1. An application to the Board that contains:
 - a. The applicant's:
 - i. Full name;
 - ii. Naturopathic license number, if known; and
 - iii. Social Security number;

- b. If a corporation, a statement of whether the corporation holds tax exempt status;
 - c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;
 - d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter, and
 - ii. The disposition of the matter;
 - e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and state statutes, regulations, and rules; and
 - f. The date the application is submitted; and
2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.

- B. An applicant for a naturopathic license may request a certificate to dispense as part of a naturopathic license application. When this request is made, approval of the naturopathic license by the Board includes approval of the certificate to dispense.

- C. A certificate holder shall renew a certificate to dispense on or before July 1 of each year by submitting:

1. An application to the Board that contains:
 - a. The applicant's full name;
 - b. If a corporation, a statement of whether the corporation holds tax exempt status;
 - c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a natural substance, drug, device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter; and
 - ii. The disposition of the matter; and
 - d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and
 2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.
- D. The Board shall grant or deny the certificate to dispense or renewal of certificate to dispense according to the time-frames in 4 A.A.C. 18, Article 7, Table 1.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-904. Dispensing; Intravenous Nutrients

- A. To prevent toxicity due to the excessive intake of a natural substance, drug, or device, before dispensing the natural substance, drug, or device to an individual, a certified physician shall:
 1. Conduct a physical examination of the individual,
 2. Conduct laboratory tests as necessary that determine the potential for toxicity of the individual, and

- 3. Document the results of the physical examination and laboratory tests in the individual's medical record.
- B.** For the purposes of A.R.S. § 32-1504(A)(8), a substance is considered a nutrient suitable for intravenous administration if it complies with A.R.S. § 32-1501(15)(iii).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by emergency rulemaking at 21 A.A.R. 51, effective December 18, 2014, for 180 days (Supp. 14-4). Emergency renewed at 21 A.A.R. 928, effective June 5, 2015, for 180 days (Supp. 15-2). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.
2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.
3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.
4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.
5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.
6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.
7. Adopt rules relating to the dispensing of natural substances, drugs and devices.
8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.
9. Adopt and use a seal.
10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.
2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.
3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.
4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.
5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director

to represent the board at the annual meeting of these organizations.

6. Adopt rules for conducting licensing examinations required by this chapter.

7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 1, Article 4, Fingerprinting



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 10, 2020

SUBJECT: Department of Child Safety
Title 21, Chapter 1, Article 4

This Five-Year-Review Report (5YRR) from the Department of Child Safety relates to rules in Title 21, Chapter 1, Article 4 regarding fingerprinting.

This is the first 5YRR for the rules. The rules were made by exempt rulemaking and became effective on November 30, 2015.

Proposed Action

The Department proposes to amend the following rules to improve clarity, conciseness, understandability, enforcement and consistency with other rules and statutes:

R21-1-401 - Definitions

R21-1-403 - Applicability

R21-1-404 - Effect of No Criminal History Disclosed

R21-1-405 - Effect of Proscribed Criminal History Disclosed or Discovered

R21-1-406 - Effect of Denied, Expired, Revoked or Suspended Level One
Fingerprint Clearance Card

The Department plans to complete a rulemaking that addresses the changes by July 2021.

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 of Child Safety (DCS) employees work with children and other vulnerable populations, and are often required by statute to have an Arizona Level One fingerprint clearance card before interacting with these populations. The Department has determined that Article 4 does not have additional economic impact from what was already imposed on stakeholders from the statute and the previous rulemaking. The rules do not add additional cost burden beyond the statutory requirements.

The stakeholders include: the Department, agencies or individuals who apply for a license or contract with the Department, vendors to the Department, and employees who are required to have an Arizona Level One fingerprint clearance card.

Depending on the circumstance, the agency is economically impacted by paying for the processing fees for each employee's Arizona Level One fingerprint clearance card to a vendor. If the agency does not pay for the Arizona Level One fingerprint clearance card, the employee, licensee, or contractor may bear the cost burden, and be impacted by paying the processing fees for their Arizona Level One fingerprint clearance card.

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

The Department has determined that the rules do not add additional cost burden beyond what is required to achieve the regulatory objective. The rules outline the least costly method for employees, contractors, licensees, and vendors who, per statutory requirement, are required to have an Arizona Level One fingerprint clearance card.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Department indicates it received one comment during the exempt rulemaking process in 2015. The Department reviewed and incorporated the comments in the final rule package.

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:

R21-1-401 - Definitions

R21-1-403 - Applicability

R21-1-404 - Effect of No Criminal History Disclosed
R21-1-405 - Effect of Proscribed Criminal History Disclosed or Discovered
R21-1-406 - Effect of Denied, Expired, Revoked or Suspended Level One
Fingerprint Clearance Card

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:

R21-1-401 - Definitions
R21-1-403 - Applicability
R21-1-404 - Effect of No Criminal History Disclosed
R21-1-405 - Effect of Proscribed Criminal History Disclosed or Discovered
R21-1-406 - Effect of Denied, Expired, Revoked or Suspended Level One
Fingerprint Clearance Card

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, for the reasons mentioned in the report, the Department indicates the following rules are not enforced as written:

R21-1-401 - Definitions
R21-1-403 - Applicability
R21-1-404 - Effect of No Criminal History Disclosed
R21-1-405 - Effect of Proscribed Criminal History Disclosed or Discovered
R21-1-406 - Effect of Denied, Expired, Revoked or Suspended Level One
Fingerprint Clearance Card

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 that the rules are not more stringent than the corresponding federal law, 42 U.S.C. 671.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department indicates the rules do not require a permit or license.

11. Conclusion

As mentioned above, and for the reasons mentioned in the report, the Department plans to amend several of its rules to improve overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department plans to submit a rulemaking to the Council by July 2021.

Council staff recommend approval of this report.



ARIZONA
DEPARTMENT
of CHILD SAFETY

Mike Faust, Director
Douglas A. Ducey, Governor

October 20, 2020

VIA EMAIL: grrc@azdoa.gov

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

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 1, Article 4, Five Year Review Report

Dear Ms. Sornsinsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 1, Article 4 which is due on October 30, 2020.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-255-2569 or angelica.trevino@azdcs.gov or Magdalena Jorquez, Senior Legislative Counsel at 602-255-2527 or magdalena.jorquez@azdcs.gov.

Sincerely,

Mike Faust
Director

Enclosure

Safety · Compassion · Change · Teaming · Advocacy · Engagement · Accountability · Family

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 1. Department of Child Safety - Administration

Article 4. Fingerprinting

October 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § 46-141

2. The objective of each rule:

Rule	Objective
R21-1-401. Definitions	The objective of this rule is to provide definitions for terms used throughout the rules in this Article.
R21-1-402. Applicability	The objective of this rule is to state who these rules apply to or do not apply to.
R21-1-403. Time Period Prior to Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card	The objective of this rule is to establish that a person pending results of a criminal background check or pending a Level One fingerprint clearance card cannot provide unsupervised direct services to juveniles.
R21-1-404. Effect of No Criminal History Disclosed	The objective of this rule is to state that a person completing a criminal self-disclosure and discloses no criminal history per A.R.S. can provide supervised direct care to juveniles.
R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered	The objective of this rule is to state that a person who discloses criminal history or criminal history is discovered may not provide direct care services or have contact with juveniles unless a good cause exception is granted.
R1-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card	The objective of this rule is to state that a provider must not allow an employee provide direct care or have contact with juveniles when an employee's fingerprint clearance card has been denied, expired, suspended, or revoked.

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	Explanation
R21-1-401, R21-1-403 through R21-1-406	In 2019, A.R.S. § 46-141 was amended. As a result, all but one Section of this Article should be updated. One of the statutory changes in A.R.S. § 46-141, for example, now requires all employees of a residential group care facility to comply with fingerprinting and obtain a fingerprint clearance card. Additionally, specific references to statute should be updated. An example of a reference that should be updated is rule references A.R.S. § 46-141 (I) which is now be A.R.S. § 46-141 (J).

5. **Are the rules enforced as written?** Yes ___ No X

Rule	Explanation
R21-1-401, R21-1-403 through R21-1-406	As mentioned in #4, Arizona Revised Statute § 46-141 was amended in 2019. Five of the six Sections in this Article need to be updated to reflect the statutory changes. The Department currently follows statutory requirements and proposes to conduct rulemaking to update the rules.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R21-1-401, R21-1-403 through R21-1-406	The rules in these Sections need to be clarified in order for the agencies to have a clear understanding of what is required and expected of them regarding fingerprinting and the Level One fingerprint clearance card. The Department proposes to conduct rulemaking to update the rules because, as mentioned in #4 of this report, Arizona Revised Statute § 46-141 was amended in 2019. The Department currently follows statutory requirements.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No ___

During the Department's exempt rulemaking process in 2015, the Department received the following comments: Clarify the term criminal background check versus obtaining a valid Level One fingerprint clearance card; and describe any work a new hire may perform pending the issue of a valid Level One fingerprint clearance card. The Department reviewed and incorporated comments where applicable in the final rule package.

8. **Economic, small business, and consumer impact comparison:**

The Department adopted the rules in Title 21, Chapter 1, Article 4 under its own title (Title 21, Child Safety) on November 30, 2015. There was no economic, small business and consumer impact statements prepared as part of the exempt rulemaking.

The cost associated with the requirements in the rules in Article 4, Fingerprinting are directed by A.R.S. § 46-141. The rules in Article 4 do not have an additional economic impact on the Department, consumers, or small businesses from those already imposed as a result of the Arizona Revised Statute. The rules in Article 4 are applicable to agencies or persons who apply for license or contract with the Department. However, the rules in Article 4 are not applicable to foster home licensing requirements or for adoption certifications. The Department of Public Safety (DPS) currently contracts with the vendor, Thales Gelmato, for fingerprinting. The vendor then forwards the digital fingerprints to DPS who completes the criminal background check. Thales Gelmato provides an online portal where consumers can register to apply for a background check, pay for the cost, find locations where their fingerprints can be taken, and check their fingerprint application status.

The Office of Licensing and Regulation (OLR), a unit within the Department, verifies that licensed agencies and their employees are compliant and remain compliant with these rules and statute. OLR also receives notification when a person's Level One fingerprint clearance card has been denied, suspended, or revoked. OLR notifies and coordinates with agencies when a licensee's or employee of the licensee's fingerprint clearance card has been denied, suspended, or revoked. The Department's Office of Procurement and Contracts verifies that a contractor with the Department is compliant and remains compliant with these rules and statutes. The Department also has established the Fidelity and Compliance Services (FCS) unit within the Office of Procurement and Contracts that routinely conducts provider site visits to audit provider personnel files including the review of central registry background checks and Level One fingerprint clearance card checks.

The Department does not charge a fee for monitoring compliance with this Article and does not pay or reimburse for the cost associated with compliance with this Article. The vendor, Thales Gelmato, charges the applicant a fee associated with fingerprinting and the Arizona Level One fingerprint clearance card. Depending on the services the agency or contractor is providing, either some or all agency employees must be fingerprinted and hold a valid Arizona Level One fingerprint clearance card. Agencies take different approaches to managing payment; there are some agencies that cover the cost for their employees while others make it the responsibility of the employee or those applying for a job with the agency.

The Department believes the rules support statute and provide further guidance. The Department also believes that the rules do not add a burden of cost to those already a result of the statutory requirement.

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?**

This is the first review of the rules in Title 21, Chapter 1 Article 4. The rules in this Article were made by final exempt rulemaking and became effective on November 30, 2015.

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

The Department believes of the rule outweigh the probable costs of the rule. The rules in the Article 4 support and provide further guidance on the requirements already set by Arizona Revised Statute.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

42 U.S.C. § 671. The rules are not more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because these rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department plans to request a moratorium exemption from the Governor’s Office in accordance with Executive Order 2020-02 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council’s review by July 2021.

TITLE 21. CHILD SAFETY

CHAPTER 1. DEPARTMENT OF CHILD SAFETY - ADMINISTRATION

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 1 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. RELEASE OF DEPARTMENT INFORMATION

Article 1, consisting of Sections R21-1-101 through R21-1-110, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Section

- R21-1-101. Definitions
- R21-1-102. Scope and Application
- R21-1-103. Procedures for Requesting DCS Information
- R21-1-104. Procedures for Processing a Request for DCS Information
- R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity
- R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect
- R21-1-107. Release of DCS information for a Research or Evaluation Project
- R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight
- R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality
- R21-1-110. Fees

ARTICLE 2. COMPREHENSIVE MEDICAL AND DENTAL PROGRAM

Article 2, consisting of Sections R21-1-201 through R21-1-213, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Section

- R21-1-201. Definitions
- R21-1-202. Eligible Member
- R21-1-203. Exceptions, Limitations, and Exclusions
- R21-1-204. Prior Authorization
- R21-1-205. Coordination of Benefits
- R21-1-206. Identification Card
- R21-1-207. Payment and Review of Claims
- R21-1-208. Abuse and Misuse of the Program
- R21-1-209. Administration of the Program
- R21-1-210. Program Practices
- R21-1-211. Consent for Treatment
- R21-1-212. AHCCCS Fee Schedule
- R21-1-213. Claim Disputes and Appeals

ARTICLE 3. APPEALS AND HEARING PROCEDURES

Article 3, consisting of Sections R21-1-301 through R21-1-314, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Section

- R21-1-301. Definitions
- R21-1-302. Hearing Proceedings
- R21-1-303. Entitlement to a Hearing, Appealable and Not Appealable Actions

- R21-1-304. Computation of Time
- R21-1-305. Request for Hearing; Form; Time Limits; Presumptions
- R21-1-306. Administration: Transmittal of Appeal
- R21-1-307. Stay of Adverse Action Pending Appeal
- R21-1-308. Hearings; Location; Notice; Time
- R21-1-309. Rescheduling the Hearing
- R21-1-310. Subpoenas
- R21-1-311. Parties Rights
- R21-1-312. Withdrawal of an Appeal
- R21-1-313. Effect of the Decision
- R21-1-314. Judicial Review

ARTICLE 4. FINGERPRINTING

Article 4, consisting of Sections R21-1-401 through R21-1-406, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Section

- R21-1-401. Definitions
- R21-1-402. Applicability
- R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card
- R21-1-404. Effect of No Criminal History Disclosed
- R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered
- R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card

ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS

Article 5, consisting of Sections R21-1-501 through R21-1-508, made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Section

- R21-1-501. Definitions
- R21-1-502. Notice of Right to Appeal, Initial Notification Letter
- R21-1-503. Time Frame to Request an Administrative Hearing
- R21-1-504. PSRT Review
- R21-1-505. Exceptions to Right to a Hearing
- R21-1-506. Dependency Adjudication
- R21-1-507. Director Review and Further Appeal After the Administrative Hearing
- R21-1-508. Entry into the Central Registry

ARTICLE 1. RELEASE OF DEPARTMENT INFORMATION**R21-1-101. Definitions**

The definitions contained in A.R.S. §§ 8-101, 8-201, 8-531, 8-801, 8-807, 8-807.01, and the following definitions apply in this Article:

1. "Abandonment" has the same meaning as "abandoned" in A.R.S. § 8-201.
2. "Abuse" means the same as in A.R.S. § 8-201.
3. "CASA" or "Court Appointed Special Advocate" means a person appointed under A.R.S. § 8-522.
4. "Centralized Intake Hotline" or "the Hotline," means the entity described in A.R.S. § 8-455.

5. "Child" means a person less than 18 years of age.
6. "Completed request" means a fully completed DCS form or a written communication submitted to DCS requesting DCS Information and providing all the information necessary, as determined by the Department, to process the request. The requester shall have the request notarized or signed by a Department employee to confirm the identity of the requester.
7. "Copying fee" means the final amount a requester is required to pay to the Department before the Department releases the requested DCS Information.
8. "DCS Information" means the same as in A.R.S. § 8-807 and includes information contained in a hard copy or electronic case record, and both oral and written information.
9. "Department" or "DCS" means the Arizona Department of Child Safety.
10. "Estimated copying fee" means the projected total amount of a copying fee. A requester is required to pay the estimated copying fee to the Department before the Department redacts and copies the requested DCS Information.
11. "FCRB" means the Foster Care Review Board established under A.R.S. § 8-515.01.
12. "Incoming communication" means a telephonic, written, or in-person contact to the Department that is received by or ultimately directed to the Centralized Intake Hotline.
13. "Neglect" means the same as in A.R.S. § 8-201.
14. "Person that provides oversight" means those individuals, entities, or bodies authorized by A.R.S. § 8-807 to have access to DCS Information that is reasonably necessary for the person to provide oversight of the Department.
15. "Person who is the subject of DCS Information" means a parent, guardian, custodian, adult household member, child, or other person identified in a DCS report.
16. "Personally identifiable information" means information that specifically identifies a protected individual and includes:
 - a. Name;
 - b. Date of Birth;
 - c. Street address;
 - d. Telephone, fax number, or email address;
 - e. Photograph;
 - f. Fingerprints;
 - g. Physical description;
 - h. Place, address, and telephone number of employment;
 - i. Social security number;
 - j. Tribal affiliation and identification number;
 - k. Driver's license number;
 - l. Auto license number;
 - m. Any other identifier that is specific to an individual; and
 - n. Any other information that would permit another person to readily identify the subject of the DCS Information.
17. "Protected individual" means a living person who is the subject of a DCS investigation and others whose personal information is confidential under A.R.S. § 8-807 and includes:
 - a. An alleged victim;
 - b. An alleged victim's sibling;
 - c. A parent, guardian, custodian, or adult household member;
 - d. A foster parent;
 - e. A child living with the alleged victim;
 - f. The person who made the report of child abuse or neglect; and
 - g. Any person whose life or safety would be endangered by disclosure of DCS Information.
18. "Redacting" means striking, blacking out, or otherwise editing out personally identifiable information or other information that is not subject to release under A.R.S. § 8-807 contained in DCS hard copy or electronic case records on protected individuals so that no one can access the information.
19. "Report" means an incoming communication to the Centralized Intake Hotline containing an allegation that meets the criteria in A.R.S. § 8-455.
20. "Request" means a written communication seeking DCS Information.
21. "Requester" means an individual, entity, or body that makes a request for DCS Information.
22. "Research requester" means an individual or organization that seeks DCS Information for a research or evaluation project.
23. "Workday" means Monday through Friday excluding Arizona state holidays and mandatory furlough days.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-102. Scope and Application

- A. This Article governs requests for and release of DCS Information made under A.R.S. § 8-807 and A.R.S. § 8-807.01.
- B. DCS maintains information in accordance with federal laws under A.R.S. § 8-807.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-103. Procedures for Requesting DCS Information

- A. A person who wishes to obtain DCS Information shall comply with A.R.S. § 8-807 and the requirements of this Article.
- B. The requester shall submit to the Department a completed request or use the form provided by the Department. The request shall include the following information:
 1. Requester's name, address, and telephone number;
 2. Name of the child victim who is the subject of the DCS report, with as much of the following information as the requester can provide on the child victim:
 - a. Other possible spellings, names, or aliases for the child;
 - b. Date of birth;
 - c. The name of the child's caregivers, parents, guardians, and custodians; and
 - d. The date of the DCS report or time-frame for the report.
 3. Any other data that the requester believes will assist the Department in identifying the DCS Information requested, such as:
 - a. The name of the child's siblings;
 - b. The child's Social Security number;
 - c. The name of the DCS Child Safety Worker handling the case; and
 - d. The location of the alleged abuse or neglect.
 4. Any additional information the Department requests to assist in processing the person's request for DCS Information.
- C. Before releasing DCS Information, the Department shall determine whether the requester is entitled to receive the DCS

Information under this Article, A.R.S. § 8-807 and A.R.S. § 8-807.01.

- D.** This Section does not apply to:
1. A person or entity authorized to receive DCS Information under A.R.S. § 8-807 to:
 - a. Meet its duties to provide for the safety, permanency, and well-being of a child;
 - b. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
 - c. Enforce or prosecute violations of child abuse or neglect laws;
 - d. Help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601 or violent sexual assault as defined in A.R.S. § 13-1423; or
 - e. Provide DCS Information to a defendant after a criminal charge has been filed as required by an order of the criminal court.
 2. This Section also does not apply to:
 - a. Juvenile, domestic relations, family or conciliation court;
 - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
 - c. The FCRB;
 - d. A CASA; or
 - e. A person that provides oversight to the Department.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-104. Procedures for Processing a Request for DCS Information

- A.** Upon receipt of a request for DCS Information, the Department shall determine whether the request is complete. If the request is incomplete, the Department shall either:
1. Return the request to the requester with a statement explaining the additional information the Department needs to process the request; or
 2. Contact the requester to obtain the missing information.
- B.** Upon receipt of a completed request, the Department shall stamp the receipt date on the request. The receipt date is the day the Department receives the completed request.
- C.** Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity

- A.** The Department shall release DCS Information without charging the fee required by R21-1-110 when a person or

entity entitled to receive DCS Information requires information to:

1. Meet its duties to provide for the safety, permanency, and well-being of a child;
 2. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
 3. Enforce or prosecute a violation of child abuse or neglect laws;
 4. To help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601, or violent sexual assaults as defined in A.R.S. § 13-1423;
 5. Provide DCS Information to a defendant as required by an order of the criminal court; or
 6. Provide DCS Information to:
 - a. A juvenile, domestic relations, family or conciliation court;
 - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
 - c. The FCRB;
 - d. A CASA; or
 - e. A person that provides oversight of DCS.
- B.** Before releasing DCS Information under this Section, the Department shall determine that the person requesting DCS Information is a person entitled to receive DCS Information under this Section and A.R.S. § 8-807.
- C.** Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect

- A.** A person who reports suspected child abuse or neglect to DCS may contact DCS to obtain a summary of the outcome of the investigation, as authorized by A.R.S. § 8-807.
- B.** After receiving a completed request and before releasing DCS Information, the Department shall determine that the person requesting DCS Information was the person who made the report as follows:
1. Obtain the name and telephone number of the requester, and
 2. Compare the requester's name with the name of the person listed as the reporting source on the DCS report.
- C.** After determining the identity of the requester, the Department shall call and advise the requester whether the Department has statutory authority to provide the requested DCS Information.
- D.** If the requester is entitled to receive the requested DCS Information under A.R.S. § 8-807, DCS shall verbally provide the person a summary of the outcome with the following DCS Information:
1. Disposition of the report;
 2. Investigation findings, if available; and

3. A general description of the services offered or provided to the child and family.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-107. Release of DCS Information for a Research or Evaluation Project

- A. A person seeking DCS Information for a research or evaluation project shall send a written request to the Department. A request shall include the following information:
 1. If the person works for a research organization:
 - a. The name of the organization, and
 - b. The organization's mission;
 2. A description of the research or evaluation project and the data requested, which explains how the results of the project will improve the Department;
 3. A description of the plan for maintaining the confidentiality of personally identifiable information, if requested, and disseminating the results of the project; and
 4. The funding source for the research or evaluation project.
- B. Within 30 workdays of receipt of a completed request from a research requester, the Department shall:
 1. Advise the requester whether the Department will provide the requested DCS Information,
 2. Inform the requester of the estimated copying fee required under R21-1-110, and
 3. Inform the requester of the expected time-frame for providing the requested DCS Information.
- C. The Department shall provide the requester with the requested DCS Information, upon completion and after receipt of the copying fee.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight

- A. A person that provides oversight of DCS and seeks DCS Information shall send a request to the Department and include the following information:
 1. The name of the person seeking the information;
 2. The purpose of the request and its relationship to the person's official duties; and
 3. The person's signature, or the signature of an authorized agent for an entity or other body, confirming that the person or authorized agent understands the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807.
- B. A legislator or committee of the legislature seeking DCS Information to perform official duties shall send a request to the presiding officer of the body of which the state legislator is a member and include the name of the person whose case record is to be reviewed and any other information that will assist the Department in locating the record. The legislator shall also sign the request, confirming that the legislator understands that the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807. The presiding officer shall forward the request to the Department within five workdays of receiving the request.
- C. The copying fee required under R21-1-110 does not apply to this Section.
- D. Within 10 workdays of receiving the request, the Department shall provide the requester with one of the following written responses:
 1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 10 workdays, the reason for the delay and the anticipated time-frame for response; or
 4. A statement that the Department cannot provide the requested DCS Information, with the statutory citation and the reason for denial.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality

- A. A person who requests DCS Information under A.R.S. § 8-807.01 concerning a case of child abuse, abandonment, or neglect that resulted in a fatality or near fatality, shall send a written request to the Department.
- B. Upon receipt of the request, the Department shall stamp the receipt date on the request and begin gathering the requested DCS Information.
- C. Prior to release of DCS Information in a case of child abuse or neglect resulting in a fatality or near fatality, the Department shall consult with the County Attorney who shall promptly inform the Department if it believes the release would cause a specific material harm under A.R.S. § 8-807.01. The Department shall not release any information that the County Attorney indicates would cause specific material harm.
- D. The Department shall notify the requester in writing of the estimated copying fee. If the requester does not want to proceed, the requester shall notify the Department within 72 hours to cancel the request. If this notification is oral, the requester shall confirm the cancellation in writing.
- E. The requester shall pay the estimated copying fee before the Department copies any DCS Information.
- F. After receipt of the final copying fee, the Department shall provide DCS Information consistent with A.R.S. § 8-807 and A.R.S. § 8-807.01.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-110. Fees

- A. If the Department determines a request for DCS Information will result in a copying fee, the Department shall notify the requester of the estimated fee before copying any DCS Information.
- B. Unless otherwise exempted by this Chapter, the Department may charge a copying fee at the current rate set by the Department, as provided on the DCS website at <https://dcs.az.gov>.
- C. The copying fee applies to both paper and electronic copies. If the DCS Information is requested in an electronic format, but does not already exist in an electronic format, DCS shall apply additional fees that reflect the actual cost of conversion to copy the DCS Information to an electronic format.
- D. The Department shall notify the requester in writing of the final copying fee.
- E. The Department shall reimburse the requester if final copying costs are less than the estimated copying fee.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 2. COMPREHENSIVE MEDICAL AND DENTAL PROGRAM**R21-1-201. Definitions**

The definitions in A.R.S. § 8-501 and the following definitions apply to this Article.

1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
2. "AHCCCS fee schedule" means the allowable amounts established by AHCCCS for medical, dental, and behavioral health services under A.R.S. § 36-2904.
3. "Behavioral health recipient" means a Title XIX or Title XXI CMDP Member who is eligible for, and is receiving the behavioral health services through Medicaid behavioral health contractors.
4. "Child Safety Worker" means the same as A.R.S. § 8-801.
5. "CMDP" or "Comprehensive Medical and Dental Program" means the program authorized by A.R.S. § 8-512 and these rules.
6. "CMDP Member" means the same as in A.R.S. § 8-512, a child who is:
 1. In a voluntary placement pursuant to section 8-806.
 2. In the custody of the department in an out-of-home placement.
 3. In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.
7. "Covered services" means those benefits as described in A.R.S. Title 36, Chapter 29, Article 1 and contained in the approved Medicaid State Plan.
8. "Department" or "DCS" means the Department of Child Safety.
9. "Director" means the Director of the Department of Child Safety.
10. "Foster parent" means the same as A.R.S. § 8-501.
11. "Medically necessary" means a covered service provided by a physician, or other licensed practitioner in 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.
12. "Non-Title XIX Behavioral Health recipient," "non-Title XIX" or "State Only Member" means a CMDP Member who is not eligible for Title XIX or Title XXI, and is receiving all covered services including behavioral health services through CMDP.
13. "Out-of-home care provider" means the person or entity with whom a child resides in out-of-home placement.
14. "Out-of-home placement" means the same as A.R.S. § 8-501.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-202. Eligible Member

- A. The Department shall provide CMDP to a CMDP Member under A.R.S. § 8-512 and this Article.
- B. The Department shall not provide CMDP care and services to:
 1. An individual who no longer meets the eligibility in A.R.S. § 8-512 and this Article;
 2. A child under the Bureau of Indian Affairs foster care program; or

3. A child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.
- C. AHCCCS determines the eligibility of a CMDP Member for Title XIX and Title XXI services, and CMDP shall notify AHCCCS if a Title XIX and Title XXI eligible CMDP Member no longer meets the criteria for coverage in A.R.S. § 8-512 and this Article.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-203. Exceptions, Limitations, and Exclusions

The Department shall not pay for a CMDP Member:

1. The cost of any medical or dental service that:
 - a. Is not medically necessary for prevention, diagnosis, or treatment of a condition, illness, or injury; or
 - b. Any health or medical service that is not eligible for reimbursement by AHCCCS in 9 A.A.C. 22, Article 2, and includes cosmetic procedures, experimental treatment, and personal care items.
2. The portion of the cost of any covered service that exceeds the charges set by the current and approved AHCCCS fee schedule. A medical, dental, or other health provider shall not submit a claim for charges that exceed the AHCCCS fee schedule to any party, including:
 - a. The Department, its representatives, or any fiscal intermediary the Department may contract with to administer this program;
 - b. The CMDP Member;
 - c. The CMDP Member's;
 - i. Guardian,
 - ii. Custodian,
 - iii. Estate,
 - iv. Foster parent, or
 - v. Birth parent.
3. The cost of care and services payable through any federal, state, county, or municipal program to which a CMDP Member may be entitled, except for the cost of care and services in excess of any such program.
4. The cost of care and services payable through an insurance carrier that provides coverage for the CMDP Member under A.R.S. § 8-512, except for the cost of care and services in excess of any such insurance benefits.
5. Any admission, service, item, or otherwise uncovered service identified in A.R.S. Title 36, Chapter 29, Article 1, or the approved Medicaid State Plan.
6. The cost of care and services provided to a behavioral health recipient received through Medicaid behavioral health contractors.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-204. Prior Authorization

- A. Medical, dental, and other health providers may be required to obtain authorization from CMDP before certain covered services are rendered in order for those services to be paid for under this Article and A.R.S. § 8-512.
- B. The Department shall not pay for any covered service that requires prior authorization and was:
 1. Not submitted for prior authorization; or
 2. Submitted but the Department did not grant prior authorization.
- C. Medical and dental providers shall be required by CMDP to obtain prior authorization for certain services according to the

provisions of A.R.S. Title 36, Chapter 29, Article 1, and 9 A.A.C. 22, Article 1.

- D.** In instances where a prior authorization is required for a covered service but not obtained by the medical, dental, or other health provider, the medical, dental, or other health provider shall not submit a bill for a covered service to any party, including:
1. The Department;
 2. The Department's representatives;
 3. Any fiscal intermediaries the Department may contract with to administer this program;
 4. The CMDP Member;
 5. The CMDP Member's:
 - a. Guardian,
 - b. Custodian,
 - c. Estate,
 - d. Foster Parent, or
 - e. Birth parent.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-205. Coordination of Benefits

- A.** The Department shall determine the possible existence of any primary insurance coverage for a CMDP Member.
- B.** The Department shall request that the court include a statement in the court order requiring a parent, guardian, or custodian of a CMDP Member to cooperate with the Department in coordinating benefits with any existing health insurance carrier, and to maintain any health insurance coverage presently existing which covers a CMDP Member.
- C.** The Department shall advise the court when a parent or guardian of a CMDP Member refuses to cooperate with CMDP in providing or signing any document required to coordinate insurance benefits, or if the parent, guardian, or custodian fails to maintain any existing insurance coverage for the CMDP Member.
- D.** In a voluntary placement, the parent or guardian shall cooperate with CMDP by providing and signing appropriate documents required to coordinate health insurance benefits.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-206. Identification Card

- A.** The Department shall issue a CMDP identification card for each CMDP Member.
- B.** The Department shall, upon placement, inform the out-of-home care provider in writing that:
 1. The identification card is not transferable;
 2. The out-of-home care provider shall only use the card for medical, dental, or other covered services for the CMDP Member whose name appears on the card; and
 3. The out-of-home care provider shall only use the card while the CMDP Member remains eligible for CMDP coverage.
- C.** The Department shall give the out-of-home care provider oral and written instructions regarding the use of the identification card when procuring medical care, dental care, or other covered services for the CMDP Member.
- D.** The Department shall provide the name and contact information of the CMDP Member's behavioral health services provider.
- E.** An out-of-home care provider shall return the CMDP Member's identification card when the CMDP Member is:
 1. No longer in out-of-home placement;

2. Placed with another out-of-home care provider; or
 3. Runs away from the out-of-home placement.
- F.** The out-of-home care provider who has possession of the card shall:
1. Immediately return the identification card to the Department under subsections (E)(1) and (2); or
 2. Have seven days from the date the CMDP Member runs away from the out-of-home care provider to return the card to the Department under subsection (E)(3).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-207. Payment and Review of Claims

- A.** A medical, dental, or health provider shall submit a claim for payment in the manner prescribed by the Department.
- B.** CMDP shall not pay a claim for a covered service if the CMDP Member does not keep an appointment, or if a covered service was not provided.
- C.** A medical, dental, or other healthcare provider shall provide a covered service to the CMDP Member before submitting a claim for the covered service to CMDP.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-208. Abuse and Misuse of the Program

- A.** The Department shall establish a procedure to investigate any alleged abuse of CMDP. If the Department substantiates abuse, the Department shall take administrative action and may take legal action.
- B.** The Department shall monitor the activity of CMDP to ensure compliance with the program requirements.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-209. Administration of the Program

- A.** The Department may contract with any insurer, insurance plan, hospital service plan, or any health service plan authorized to do business in this State, with any fiscal intermediary, or with any combination of such plans or methods as permitted in A.R.S. Title 36, Chapter 29, Article 1.
- B.** Any contract with any of the entities listed in subsection (A), shall:
 1. Be specific as to the responsibilities of each party to the contract;
 2. Provide for reasonable payment to the contractor for its administrative services as required by the contract; and
 3. Be consistent with the rules in this Article and authorizing legislation. The parties may make changes to the contract by mutual consent signed by an authorized representative of the Department and the contractor to be consistent with current rules and legislation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-210. Program Practices

- A.** All Federal and State laws, regulations, and rules regarding the disclosure and use of confidential health and personal information concerning a CMDP Member shall apply to all covered services provided under this Article.
- B.** All Federal and State non-discrimination laws, regulations, and rules shall apply to all covered services provided under this Article.

- C. The Department shall take into account the CMDP Member's and out-of-home care provider's literacy and culture and make interpreters and translation services available to a CMDP Member at no cost.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-211. Consent for Treatment

- A. For a CMDP Member in voluntary placement only, the Department shall obtain consent of the parent or guardian for medical treatment involving surgery, general anesthesia, or blood transfusion of the CMDP Member, except for an emergency situation described in subsection (B).
- B. In case of an emergency, in which the CMDP Member in voluntary placement is in need of immediate hospitalization, medical attention, or surgery, and when the parents of a CMDP Member in voluntary placement cannot readily be located, the out-of-home care provider or the Child Safety Worker may give consent.
- C. For a CMDP Member under R21-1-201(6)(2) who is in the custody of the Department in an out-of-home placement, the Department shall, if possible, obtain the consent of the parent or guardian of the CMDP Member for surgery, general anesthesia, or blood transfusion.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-212. AHCCCS Fee Schedule

- A. CMDP shall pay a medical, dental, and health provider in accordance with the established AHCCCS fee schedule unless otherwise permitted by A.R.S. § 8-512, or in the contract between the Department and AHCCCS.
- B. A current AHCCCS fee schedule is available for a medical, dental, other health provider, and CMDP Member on the AHCCCS website, <http://www.azahcccs.gov/>. The Department shall also make the fee schedule available upon request.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-213. Claim Disputes and Appeals

- A. Claim disputes are governed by the Medicaid rules in 9 A.A.C. Chapter 34.
- B. Appeals by Title XIX and Title XXI eligible CMDP Members are governed by the Medicaid rules for State Hearings in 9 A.A.C. Chapter 34.
- C. Appeals by State-Only Members are governed by Article 3 of this Chapter.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 3. APPEALS AND HEARING PROCEDURES

R21-1-301. Definitions

The following definitions apply in this Article.

1. "Administration" means the Department's organizational unit responsible for licensing or providing benefits or services that are the subject of an adverse action. The administrations covered by this Article are: OLR, CMDP, ILP, TILP, adoption subsidy and guardianship subsidy.
2. "Administrative appeal" means a written request to the Department to contest an adverse action at an administrative hearing.

3. "Administrative Law Judge" or "ALJ" means the same as A.R.S. § 41-1092(1).
4. "Adoption agency" means the same as "agency" in A.R.S. § 8-101(2).
5. "Adoption subsidy" means the same as A.R.S. § 8-141(A)(1) and includes the non-recurring adoption expense program under A.R.S. § 8-161 et seq.
6. "Adverse action" means the denial, suspension, or revocation of a foster home license, Child Welfare Agency license, and adoption agency license, or a denial or reduction of guardianship subsidy, adoption subsidy, or CMDP, ILP, or TILP services.
7. "Appealable agency action" means the same as A.R.S. § 41-1092(3).
8. "Appellant" means the party who requests a hearing with the Department to challenge an adverse action under R21-1-303.
9. "Applicant" means a person who has applied for a license issued by the Department or for benefits or services provided by the Department. Benefits and services under this Article include CMDP, ILP, TILP, guardianship subsidy, and adoption subsidy.
10. "Child Welfare Agency" means a person licensed by the Department to engage in the activities defined in A.R.S. § 8-501(A)(1).
11. "CMDP" means the Comprehensive Medical and Dental Program described in A.R.S. § 8-512.
12. "Client" means a person who is licensed or receiving benefits or services from one or more of the Administrations covered by this Article.
13. "Corrective action plan" means a written proposal specified by OLR for a foster parent, or a Child Welfare Agency to remedy the violation of a licensing requirement within a specified time-frame.
14. "Department" or "DCS" means the Arizona Department of Child Safety.
15. "Foster Home" means the same as A.R.S. § 8-501(A)(5) and includes a "Group Foster Home" defined in A.R.S. § 8-501(A)(7).
16. "Foster parent" means the same as A.R.S. § 8-501, and includes anyone licensed for any type of foster home including a group home.
17. "Guardianship subsidy" means the program described in A.R.S. § 8-814.
18. "Independent Living Program" or "ILP" means an array of assistance and support services that DCS provides, contracts, refers, or otherwise arranges to help a person eligible under A.R.S. § 8-521, to transition to adulthood by building the skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
19. "Licensee" means a person currently licensed as a foster parent, Child Welfare Agency, or adoption agency.
20. "Noncompliance Status" means the Department has received and substantiated a complaint or a Department representative has observed a violation of an adoption agency's license that does not endanger the health, safety, or well-being of a client.
21. "Office of Administrative Hearings" or "OAH" means the State's independent, quasi-judicial, administrative hearing body defined in A.R.S. § 41-1092.01.
22. "Office of Licensing and Regulation" or "OLR" means the administration in the Department responsible for licensing a foster home, Child Welfare Agency and adoption agency.

23. "Person" means an individual, partnership, joint venture, company, corporation, firm, association, society, or institution.
24. "Transitional Independent Living Program" or "TILP" means a program of services that provides assistance and support in counseling, education, vocation and employment, and the attainment or maintenance of housing to a person who qualifies under A.R.S. § 8-521.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-302. Hearing Proceedings

Unless otherwise expressly addressed, all pre-hearing and hearing proceedings in A.R.S. §§ 41-1092.01 through A.R.S. 41-1092.09 and 2 A.A.C. 19 shall apply.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions

- A.** An applicant, licensee, or client, who disputes an adverse action may appeal and request an administrative hearing from the Department to challenge the adverse action as provided in this Article.
- B.** The following adverse actions are appealable:
1. An adverse licensing action on:
 - a. A foster home license (A.R.S. § 8-506);
 - b. A Child Welfare Agency license (A.R.S. § 8-506.01); and
 - c. An adoption agency license (A.R.S. § 8-126).
 2. Any decision denying, reducing, or terminating:
 - a. An adoption subsidy (A.R.S. § 8-145);
 - b. Nonrecurring expenses (A.R.S. § 8-166);
 - c. A permanent guardianship subsidy (A.R.S. § 8-814);
 - d. Independent Living Program services (A.R.S. § 8-521);
 - e. Transitional Independent Living Program services (A.R.S. § 8-521.01); and
 - f. CMDP services or benefits for non-Title XIX and Title XXI eligible individuals. Title XIX and Title XXI eligible individuals must follow A.R.S. § 36-2903.01 and 9 A.A.C. 34, and may request an Administrative Hearing through the Arizona Health Care Cost Containment System.
- C.** 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 obtain a Level One fingerprint clearance card;
 3. Imposition of noncompliance status for an adoption agency;
 4. Imposition of a corrective action plan for a foster home or a Child Welfare Agency license;
 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 for a foster home under A.R.S. § 8-509(D).
- D.** A finding of child abuse or neglect in a DCS investigation is not appealable under this Article. A person may appeal a proposed finding of child abuse or neglect made in a DCS investigation of a person or a licensee as prescribed in A.R.S. § 8-811 and A.A.C. Title 21, Chapter 1, Article 5.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-304. 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.** The mailing date is the date of the document, unless the facts show otherwise.
- C.** A document mailed by the Department is deemed received by the addressee, five days after the mailing date to the addressee's last known address, unless the facts show otherwise.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-305. Request for Hearing; Form; Time Limits; Presumptions

- A.** An appellant who wishes to appeal an adverse action shall file a written request within the following timeframes for a hearing with the Administration:
1. For a Child Welfare Agency, 20 days after receipt of the adverse action notice under A.R.S. § 8-506.01;
 2. For a foster home license revocation, 25 days after the mailing date of the adverse action notice under A.R.S. § 8-506;
 3. For all other appeals covered by this Article, 20 days after receipt of the adverse action notice.
- B.** The Administration shall provide a form for requesting an administrative hearing and, upon request, shall assist an appellant in completing the form.
- C.** An appellant shall include the following information in the request for an administrative hearing:
1. Name, address, and telephone number, and if applicable, e-mail address of the person subject to the adverse action;
 2. Identification of the Administration initiating the adverse action;
 3. A description of the adverse action that is the subject of the appeal;
 4. The date of the notice or letter of adverse action; and
 5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- D.** The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (C), so long as the request contains sufficient information for the Department to determine the identity of the appellant.
- E.** The Department shall forward the request for a hearing to OAH along with the information specified in A.A.C. R2-19-103.
- F.** A request for hearing is deemed filed with the Department:
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 (F)(1).
- G.** An appellant whose appeal is denied as untimely may request a review by the Department Director or designee. The request for review shall contain the following information:

1. Whether the appellant received the adverse action notice, and if so, when the appellant received the notice;
 2. If the appellant did not receive the adverse action notice;
 - a. Whether the appellant moved recently, and if so, whether the appellant notified the Department of the new address;
 - b. The type of mail receptacle the appellant uses;
 - c. The person that collects or receives the appellant's mail besides the appellant such as the appellant's;
 - i. Spouse,
 - ii. Child, or
 - iii. Roommate.
 - d. Whether the appellant has or is currently experiencing problems in receiving mail such as:
 - i. Not receiving the appellant's own mail; or
 - ii. Receiving others' mail;
 3. If the appellant did not receive the adverse action notice, how the appellant found out about the adverse action; and
 4. The date the appellant made the appeal to the Department and the method sent such as:
 - a. Hand delivery,
 - b. U.S. Mail,
 - c. Fax, or
 - d. E-mail.
- H.** The Department Director or designee may determine that a document was timely filed if the appellant demonstrates 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.
- I.** When the Administration receives a request for a hearing that was not filed on time, the Department Director or designee shall determine if the delay meets the criteria under subsection (H), and if so, shall schedule a hearing with OAH.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-306. Administration: Transmittal of Appeal

An Administration that receives a request for an appeal shall send the OAH a copy of the request and a copy of the adverse action notice within two work days of receipt of the request. The Administration shall include all information as specified in A.A.C. R2-19-103.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-307. Stay of Adverse Action Pending Appeal

- A.** If an applicant, licensee, or client does not appeal, the Department shall carry out the adverse action after the time for filing an appeal has passed, or sooner if the appellant waives the delay of action in writing.
- B.** If an applicant, licensee, or client does not appeal, the Department shall not carry out the adverse action if the appellant has an additional appealable adverse action notice that may result in the same adverse action proposed in the current notice, and the time for filing an appeal to the additional adverse action notice has not passed.
- C.** If an appellant timely appeals an appealable adverse action as provided in R21-1-305, the Department shall not carry out the

adverse action until an administrative hearing has been held and the Director certifies a final administrative decision.

- D.** If an appellant timely appeals an adverse action under R21-1-305, the Department may immediately carry out the adverse action under the following circumstances:
1. The appellant expressly waives the delay of action;
 2. The appeal challenges an adverse action that is not appealable under R21-1-303(C);
 3. The appellant withdraws the request for hearing;
 4. The appellant fails to appear for the hearing; or
 5. The Department summarily suspends a license and makes all of the required findings under A.R.S. § 41-1064.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-308. Hearings: Location; Notice; Time

- A.** The hearing shall be held by OAH.
- B.** OAH may schedule a telephonic hearing or permit a witness to appear telephonically as granted in A.A.C. R2-19-114.
- C.** After receiving a request for an appeal, the Department shall hold the hearing:
 1. For a foster parent, 10 days after the Department receives the request for an appeal under A.R.S. § 8-506;
 2. For a Child Welfare Agency, 10 days after the Department receives the request for an appeal under A.R.S. § 506.01; and
 3. The time listed in A.R.S. § 41-1092.05(A)(2) for all other appeals.
- D.** The Department shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is held within the 10-day period specified in subsection (C)(1) and (C)(2). For hearings held within the 10-day period, the Department shall notify the parties by telephone and send a written notice at the earliest date practicable.
- E.** The notice of the hearing shall be in writing and shall include the information required in A.R.S. § 41-1092.05(D) and A.A.C. R2-19-104.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-309. Rescheduling a Hearing

- A.** An appellant may request to postpone or reschedule a hearing under R2-19-110.
- B.** Except in emergency circumstances, the appellant shall file a request for postponement at least five work days before the scheduled hearing date. OAH may deny an untimely request by considering the factors in A.A.C. R2-19-110.
- C.** When OAH reschedules a hearing under this Section or under A.A.C. R2-19-110, OAH notifies all interested parties in writing of the rescheduled hearing. The notice requirements in R21-1-305(A) do not apply to postponed or rescheduled hearings.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-310. 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.
- B.** A party shall request a subpoena under A.A.C. R2-19-106 and A.A.C. R2-19-113.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-311. Parties' Rights

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in A.A.C. R2-19-106(A)(2) and A.A.C. R2-19-110.
2. The right to a copy, before or during the hearing, of documents in the Department's file regarding the appellant, and documents the Department may use at the hearing, except documents:
 - a. Shielded by the attorney-client privilege;
 - b. Shielded by work-product privilege; or
 - c. Otherwise prohibited by federal or state confidentiality laws.
3. The right to file a motion with OAH to disqualify an ALJ from conducting a hearing as provided in A.R.S. § 41-1092.07(A);
4. The right to request subpoenas for witnesses and evidence as provided in A.A.C. R2-19-113;
5. The right to represent themselves or be represented by a licensed attorney, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, if dissatisfied with a decision.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-312. 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 form available for an appellant to withdraw an appeal. An appellant may also orally withdraw an appeal on the open record under A.A.C. R2-19-111.
- B. The Department shall sign the form and file the form at OAH.
- C. OAH shall vacate the hearing and return the matter to the Department under A.A.C. R2-19-111.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-313. Effect of the Decision

- A. If the Department Director reviews the ALJ's recommended decision the Director may agree or disagree with the recommended decision as permitted in A.R.S. § 41-1092.08(F).
- B. The Department Director's final administrative decision becomes effective on the day OAH certifies the Department Director's final administrative decision.
- C. If the Department Director chooses not to review the recommended decision, then the ALJ's recommended decision becomes the final administrative decision within the time-frame under A.R.S. § 41-1092.08.
- D. If the final administrative decision affirms the adverse action, the adverse action remains in effect until the appellant appeals and obtains a higher judicial decision reversing or vacating the final administrative decision.
- E. If a final administrative decision reverses the Department's adverse action, the Department shall not take the adverse action.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-314. Judicial Review

Any party adversely affected by a final administrative decision may seek judicial review as prescribed in A.R.S. § 1092.08 and A.A.C. R2-19-122.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 4. FINGERPRINTING**R21-1-401. Definitions**

In this Article, unless the context otherwise requires:

1. "Applicant" means personnel who apply for a Level One fingerprint clearance card or a person who applies for a license or certificate issued by the Department and who A.R.S. § 46-141(I) requires to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check.
2. "Criminal History" means the same as A.R.S. § 41-1750(Y)(5).
3. "Department" or "DCS" means the Arizona Department of Child Safety.
4. "Direct visual supervision" means within sight and hearing of a provider or personnel who have a Level One fingerprint clearance card.
5. "Juvenile" means an individual who is less than 18 years of age.
6. "Level One fingerprint clearance card" means the same as A.R.S. § 41-1758.07(A).
7. "License" means the whole or part of a Department permit, registration, or similar form of permission or authorization required by law, but does not include a foster home license.
8. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person.
9. "Provider" means a federally recognized Indian tribe, county, political subdivision, military base, or person with whom the Department contracts or licenses to provide services to juveniles.
10. "Personnel" means paid or unpaid persons who have or may have direct contact with juveniles or provide services directly to juveniles for a provider, including the provider, consultants, subcontractors, volunteers, students, and persons otherwise affiliated with the provider.
11. "Services directly to juveniles" means in-person interaction between a provider or personnel and a juvenile.
12. "Supervised" means that personnel are within direct visual supervision at all times when providing services of any nature directly to juveniles, including psychological, medical, or any ancillary services.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-402. Applicability

This Article covers any applicant, provider, and personnel. This Article does not apply to a foster home license or adoptive home certification.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card

- A. A provider shall not allow an applicant who applies for a Level One fingerprint clearance card under A.R.S. § 46-141 to provide services directly to juveniles or have unsupervised contact with juveniles until the applicant obtains a valid Level One fingerprint clearance card.
- B. A provider shall not allow an applicant who is required to submit fingerprints to the Department under A.R.S. § 46-141(I) to provide services directly to or have unsupervised contact with juveniles unless the applicant clears the Criminal records check or obtains a valid Level One fingerprint clearance card, as applicable.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-404. Effect of No Criminal History Disclosed

A provider may allow an applicant or personnel who certifies under A.R.S. § 46-141(E), (F), and (G) that the applicant or personnel has not been convicted of or is awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), and who is not subject to registration as a sex offender in this state or any other jurisdiction, to provide supervised services directly to juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered

- A. A provider shall not allow an applicant or personnel who disclose or have been convicted of or are awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), or who are subject to registration as a sex offender in this state or any other jurisdiction to provide services directly to or have any contact with juveniles.
- B. A provider shall not allow an applicant or personnel who apply for a Good Cause Exception under A.R.S. § 41-619.55 to provide services directly to or have any contact with juveniles until the Good Cause Exception is granted.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card

Upon notification by the Department of the denial, expiration, revocation, or suspension of a Level One fingerprint clearance card, the provider shall immediately prohibit those personnel from providing services directly to or having any contact with juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS**R21-1-501. Definitions**

The following definitions apply to this Article.

1. "Abuse" means the same as A.R.S. § 8-201(2).
2. "Amend the finding" means the same as A.R.S. § 8-811(L)(1).
3. "Case Record" means the Report of child abuse and neglect and related records the Department intends to submit at the hearing, including information from internal and external sources.

4. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
5. "Completed Investigation" means the case record and the proposed substantiated finding for the report of child abuse or neglect have been reviewed and approved by a supervisor and contains all of the information required to support a finding of proposed substantiation.
6. "Day" means a calendar day.
7. "Department" or "DCS" means the Arizona Department of Child Safety.
8. "Ineligibility Letter" means a notice sent from the Department via first class mail to a person alleged to have committed child abuse or neglect stating that the person is not entitled to an administrative hearing on the issue for one of the reasons listed in R21-1-505.
9. "Initial Notification Letter" means a notice sent from the Department via first class mail to an alleged perpetrator informing the person of the proposed finding of child abuse or neglect to be entered in the Central Registry and describing appeal rights to challenge the proposed finding.
10. "Legally excluded" means that an alleged perpetrator is not entitled to an administrative hearing under A.R.S. § 8-811, because:
 - a. A court or administrative law judge has made a finding of abuse or neglect based on the same allegations as in the proposed substantiated finding; or
 - b. A court has found that a child is dependent, or has terminated a parent's rights based upon the same allegations of abuse or neglect as in the proposed substantiated finding.
11. "Neglect" or "neglected" means the same as A.R.S. § 8-201(24).
12. "Perpetrator" means a person who has committed child abuse or neglect under the standards required for listing in the Central Registry.
13. "Probable Cause" means some credible evidence that abuse or neglect occurred.
14. "Proposed Substantiated Finding" means the Department has investigated and found probable cause to support an allegation of abuse or neglect sufficient to place the alleged perpetrator's name in the Central Registry, subject to the alleged perpetrator's right to notice and a hearing.
15. "PSRT" means the Department's Protective Services Review Team, that administers the process described in A.R.S. § 8-811 for review and appeal of proposed substantiated findings of child abuse or neglect.
16. "Report For Investigation" means the same as A.R.S. § 8-201(30).
17. "Substantiated Finding" means a proposed substantiated finding that:
 - a. An administrative law judge found to be true by a probable cause standard of proof after notice and an administrative hearing and the Department Director accepted the decision;
 - b. The alleged perpetrator did not timely appeal; or
 - c. The alleged perpetrator was not entitled to an administrative hearing because the alleged perpetrator was legally excluded as defined in subsection (11).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-502. Initial Notification Letter

- A. When PSRT receives a proposed substantiated finding, PSRT shall notify an alleged perpetrator that:
1. The Department intends to substantiate the proposed finding and place the alleged perpetrator's name in the Central Registry;
 2. The alleged perpetrator may obtain a copy of the Report for Investigation; and
 3. The alleged perpetrator has the right to an administrative hearing before the person's name is entered in the Central Registry.
- B. The Department shall send the Initial Notification Letter to the alleged perpetrator no more than 14 days after the Completed Investigation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-503. Time Frame to Request an Administrative Hearing

- A. An alleged perpetrator shall request a hearing on the proposed substantiated finding by the Department within 20 days from the mailing date of the Initial Notification Letter. The mailing date of the Initial Notification Letter is deemed the date of the letter.
- B. A request is timely if:
1. The request is postmarked no later than 20 days from the mailing date of the Initial Notification Letter;
 2. The request is not postmarked, and the request is stamped as received by the Department within 20 days of the mailing date of the initial notification letter;
- C. If the Department determines a hearing request is untimely, the Department shall enter the alleged perpetrator's name on the Central Registry unless:
1. The delay is due to Department error;
 2. The delay is due to the postal service; or
 3. There is evidence the delay is due to circumstances beyond the reasonable control of the alleged perpetrator.
- D. To request an administrative timeliness review, the alleged perpetrator shall submit:
1. An oral or written request to PSRT using the contact information on the initial notification letter;
 2. A statement explaining why the request is untimely; and
 3. Evidence of the cause of the untimeliness.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-504. PSRT Review

- A. Upon receiving a timely request for an administrative hearing, the PSRT shall within 60 days review the Case Record and shall:
1. Determine there is no probable cause that the alleged perpetrator committed child abuse or neglect and amend the proposed substantiated finding to unsubstantiated; or
 2. Determine there is probable cause and send the alleged perpetrator a hearing notice.
- B. The hearing notice shall include:
1. The date and time of the hearing;
 2. Notification of the right to request a settlement conference no later than 20 days before the hearing; and
 3. Notification of the right, upon oral or written request to the Department, to receive a copy of the case record, redacted as required by A.R.S. § 8-807.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-505. Exceptions to Right to a Hearing

- A. An alleged perpetrator shall be eligible to have an administrative hearing unless the alleged perpetrator is legally excluded.
- B. The Department shall mail an alleged perpetrator who is legally excluded an Ineligibility Letter within seven days of the PSRT determination of ineligibility for an appeal.
- C. The Department shall not schedule an administrative hearing if the alleged perpetrator:
1. Is a party in a pending civil, criminal, or administrative proceeding in which the same allegations of child abuse or neglect are at issue; or
 2. Has a pending juvenile proceeding in which the same allegations of child abuse or neglect are at issue.
- D. An alleged perpetrator whose hearing is not scheduled under subsection (C)(1) shall have six months from the date of the Ineligibility Letter to provide court documentation to the Department showing:
1. The results of the legal action;
 2. That the proceedings are still pending; or
 3. That the legal action did not determine the allegations of child abuse and neglect.
- E. If the alleged perpetrator does not contact the Department within six months of the date of the Ineligibility Letter with the information listed in subsection (D), the Department shall enter the person's name and the finding in the Central Registry.
- F. Notwithstanding subsection (E), if the alleged perpetrator contacts the Department after six months and provides the documentation in subsection (D) the alleged perpetrator may be entitled to a hearing subject to the provisions of R21-1-508.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-506. Dependency Adjudication

If the court in a proceeding described in A.R.S. § 8-811(F)(3), makes a finding of dependency based on child abuse or neglect against a person, the Department shall enter the person's name and the fact of the dependency finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-507. Director Review and Further Appeal After the Administrative Hearing

- A. An administrative law judge's decision is not final until the Department Director reviews the decision. The Director has 30 days to review the administrative decision. The Director may accept, reject or modify an administrative law judge's decision under A.R.S. § 41-1092.08.
- B. A perpetrator may appeal the final administrative decision under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-508. Entry into the Central Registry

- A. If the perpetrator does not appeal the proposed substantiation, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry.
- B. If the administrative decision upholds the substantiation and the Department Director accepts the decision, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry no later than 20 days after the date of the final administrative decision.

- C. The Department shall not enter the person's name or the finding in the Central Registry if the:
 - 1. Final administrative decision holds that the allegations of abuse or neglect are not substantiated; or
 - 2. A court ruling described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.
- D. If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, the PSRT shall enter the person's name and the substantiated finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. 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.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. 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 title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, 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 and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department 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 monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

General Statutory Authority

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

46-141. Criminal record information checks; fingerprinting employees and applicants; definition

A. Each license granted by the department of economic security and each contract entered into between the department of economic security and any contract provider for the provision of services to juveniles or vulnerable adults shall provide that, as a condition of employment, personnel who are employed by the licensee or contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment.

B. Each person, whether paid or not, shall have as a condition of employment a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days after being employed, if the person is any of the following:

1. Licensed by the department of child safety or employed by the licensee.
2. A department of child safety contractor for the provision of services directly to juveniles or vulnerable adults.
3. An adult working in a group home, residential treatment center, shelter or other congregate care setting.

C. The licensee or contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The department of economic security or the department of child safety may allow all or part of the costs of fingerprint checks to be included as an allowable cost in a contract.

D. A service contract or license with any contract provider or licensee that involves the employment of persons who have contact with juveniles or vulnerable adults shall provide that the contract or license may be canceled or terminated immediately if a person certifies pursuant to subsections G and H of this section that the person is awaiting trial on or has been convicted of any of the offenses listed in subsections G and H of this section in this state or similar offenses in another state or jurisdiction or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

E. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection D of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections G and H of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection B is immediately prohibited from employment or service with the contract provider or

licensee in any capacity requiring or allowing contact with juveniles or vulnerable adults and is not allowed to work in a group home, residential treatment center, shelter or other congregate care setting.

F. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection D of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections G and H of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection C is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring contact with juveniles or vulnerable adults and is not allowed to work in a group home, residential treatment center, shelter or other congregate care setting unless the person is granted a good cause exception pursuant to section 41-619.55.

G. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults or who are allowed to work in a group home, residential treatment center, shelter or other congregate care setting shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they are awaiting trial on or have ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

H. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles or who are allowed to work in a group home, residential treatment center, shelter or other congregate care setting shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.

I. Federally recognized Indian tribes or military bases may submit and the department of economic security and the department of child safety shall accept certifications that state that personnel who are employed or who will be employed during the contract term have not been convicted of, have not admitted committing or are not awaiting trial on any offense under subsection G of this section.

J. A person who applies to the department of economic security or the department of child safety for a license or certificate or for paid or unpaid employment, including contract services, and who will provide direct services to juveniles or vulnerable adults or who will work in a group home, residential treatment center, shelter or other congregate care setting shall submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section

41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. This subsection does not apply to those persons who are subject to section 8-105, 8-509, 8-802 or 41-1968 or subsection A of this section.

K. The special services unit of the department of economic security and employees of the department of child safety may use the department of public safety automated system to update all criminal history record information in order to ensure, to the maximum extent reasonably possible, complete disposition information. The department of economic security or the department of child safety may deny employment or issuance or renewal of the contract or license applied for in these cases if it determines that the criminal history record information indicates that the employee, applicant or contractor is not qualified or suitable.

L. Volunteers who provide services to juveniles or vulnerable adults under the direct visual supervision of the contractor's or licensee's employees are exempt from the fingerprinting requirements of this section, unless the volunteer works in a group home, residential treatment center, shelter or other congregate care setting.

M. The department of economic security or the department of child safety shall notify the department of public safety if the department of economic security or the department of child safety receives credible evidence that a person who possesses a valid fingerprint clearance card pursuant to subsection A of this section either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B or C.
2. Falsified information on the form required by subsection G of this section.

N. For the purposes of this section, "vulnerable adult" has the same meaning prescribed in section 46-451.

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 9, Articles 1 & 2



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 10, 2020

SUBJECT: Department of Child Safety
Title 21, Chapter 9, Articles 1 & 2

This Five-Year-Review Report (5YRR) from the Department of Child Safety relates to rules in Title 21, Chapter 9. The rules cover the following:

Article 1 - Definitions

Article 2 - Adoption Agency Licensing Requirements

This is the first 5YRR of these rules. The rules were made by exempt rulemaking and became effective January 24, 2016.

Proposed Action

The Department, for the reasons mentioned in the report, is proposing to amend several of its rules to improve overall clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. The Department plans to complete a rulemaking by September 2021.

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 of Child Safety (DCS) employees work with children and other vulnerable populations, and are often required by statute to have an Arizona Level One fingerprint clearance card before interacting with these populations. The Department has determined that Article 4 does not have additional economic impact from what was already imposed on stakeholders from the statute and the previous rulemaking. The rules do not add additional cost burden beyond the statutory requirements.

The stakeholders include: the Department, agencies or individuals who apply for a license or contract with the Department, vendors to the Department, and employees who are required to have an Arizona Level One fingerprint clearance card.

Depending on the circumstance, the agency is economically impacted by paying for the processing fees for each employee's Arizona Level One fingerprint clearance card to a vendor. If the agency does not pay for the Arizona Level One fingerprint clearance card, the employee, licensee, or contractor may bear the cost burden, and be impacted by paying the processing fees for their Arizona Level One fingerprint clearance card.

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

The Department has determined that the rules do not add additional cost burden beyond what is required to achieve the regulatory objective. The rules outline the least costly method for employees, contractors, licensees, and vendors who, per statutory requirement, are required to have an Arizona Level One fingerprint clearance card.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Department indicates it received written criticisms during the exempt rulemaking public hearing process. The Department incorporated the comments where applicable into the final rule.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R21-9-202 - Who Shall Be Licensed

R21-9-205 - License: Issuance; Denial

R21-9-207 - Application for License Renewal; Fee

R21-9-214 - Adoption Agency Employees: Hiring; References; Fingerprinting

R21-9-224 - Physical Space Requirements; Transportation of a Child

R21-9-228 - Reporting Requirements: Abuse; Adoption Agency Change; Change of Circumstances of a Child or Family

R21-9-229 - Closure of Adoption Agency: Record

R21-9-233 -Monitoring: Inspections and Interviews; Compliance Audit

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

Yes, the Department indicates the rules are overl consistent with other rules and statutes with the exception of the following:

R21-9-207 - Application for License Renewal; Fee

R21-9-224 - Physical Space Requirements; Transportation of a Child

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 overall enforced as written with the exception of the following:

R21-9-207 - Application for License Renewal; Fee

R21-9-224 - Physical Space Requirements; Transportation of a Child

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

Not applicable. The Department indicates the rules are not more stringent than the corresponding federal law, 42 U.S.C. 671.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a general permit.

11. Conclusion

As mentioned above, the Department plans to amend several of its rules to improve overall clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. The Department plans to complete a rulemaking by September 2021.

Council staff recommends approval of this report.



ARIZONA
DEPARTMENT
of CHILD SAFETY

Mike Faust, Director
Douglas A. Ducey, Governor

October 20, 2020

VIA EMAIL: grrc@azdoa.gov

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

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 9, Article 1 and Article 2, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 9, Article 1 and Article 2 which is due on October 30, 2020.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-255-2569 or angelica.trevino@azdcs.gov or Magdalena Jorquez, Senior Legislative Counsel at 602-255-2527 or magdalena.jorquez@azdcs.gov.

Sincerely,

Mike Faust
Director

Enclosure

Safety · Compassion · Change · Teaming · Advocacy · Engagement · Accountability · Family

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 9. Department of Child Safety - Adoption Agency Licensing

Article 1. Definitions

Article 2. Adoption Agency Licensing Requirements

October 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-120, 8-121, 8-126, 8-127, 8-129, 8-130, 8-132, 8-134, and 46-141

2. The objective of each rule:

Article 1. Definitions

Rule	Objective
R21-9-101. Definitions	The objective of this rule is to promote a uniform understanding of terminology used throughout this Chapter.

Article 2. Adoption Agency Licensing Requirements

Rule	Objective
R21-9-201. Who Shall Be Licensed	The objective of this rule is to establish who may perform adoption services and what services they can perform.
R21-9-202. Adoption Agency License; Initial Application Package; Fee	The objective of this rule is to establish the initial licensing requirements and the initial licensing procedure for an adoption agency. This rule also establishes a non-refundable fee of \$400 for an initial application.
R21-9-203. Additional Requirements for Licensing; Out-of-state and Foreign Adoption Services	The objective of this rule is to establish that an out-of-state adoption agency or an agency that is to conduct foreign adoptions must comply with the requirements of this Section in addition to those outlined in R21-9-202.
R21-9-204. Department Procedures for Processing License Applications; Licensing Time Frames	The objective of this rule is to establish the procedures to be followed by the Department to process adoption license applications. The rule also clarifies what the Department will consider a complete initial and renewal application.
R21-9-205. License: Issuance Denial	The objective of this rule is to establish the procedures the Department will follow when processing and evaluating a license application. This rule also establishes

	the criteria the Department will use to determine whether a license is to be issued or denied.
R21-9-206. License: Term; Non-transferability	The objective of this rule is to establish parameters regarding the issuance of an adoption license, and prohibits the transference or assignment of a license.
R21-9-207. Application for License Renewal; Fee	The objective of this rule is to establish the requirement for annual renewal of a license and to specify the requirements for license renewal. This rule also establishes a non-refundable fee of \$225 for a renewal application.
R21-9-208. Renewal License; Issuance	The objective of this rule is to establish the procedures the Department will follow when processing and evaluating a license renewal application. This rule also establishes the criteria the Department will use to determine if a license will be renewed.
R21-9-209. Amended License	The objective of this rule is to establish when an adoption agency must request an amendment. This rule also establishes the Department's criteria to issue an amended license and clarifies when an amended license expires.
R21-9-210. Governing Body	The objective of this rule is to establish that an adoption agency is required to have a governing body. The rule also describes who serves as the governing body and their responsibilities.
R21-9-211. Adoption Agency Administrator	The objective of this rule is to establish that an adoption agency is required to have an agency administrator. The rule also describes the educational and experience required for the administrator and the administrator's responsibilities.
R21-9-212. Social Services Director	The objective of this rule is to establish that an adoption agency is required to have a social services director. This rule also describes the educational and experience required of the social services director and describes the social services director's responsibilities.
R21-9-213. Social Workers	The objective of this rule is to establish that an adoption agency is required to have sufficient social workers. This rule also describes the minimum educational and experience requirements for the social worker as well as describes the roles and duties of a social worker.
R21-9-214. Adoption Agency Employee: Hiring; References; Fingerprinting	The objective of this rule is to establish requirements pertaining to the hiring of new job applicants. This rule also emphasizes requirements in regards to reference checks and fingerprinting.
R21-9-215. Adoption Agency Volunteers; Interns	The objective of this rule is to establish standards in relation to the use of volunteers or student interns.

R21-9-216. Personnel Records	The objective of this rule is to establish the requirement for an adoption agency to maintain a personnel file for each agency employee. This rule also establishes personnel record retention.
R21-9-217. Training Requirements	The objective of this rule is to establish the adoption agency's responsibility to provide initial and ongoing training for professional employees. This rule also requires the adoption agency document the training provided.
R21-9-218. Contracted Services	The objective of this rule is to establish the requirements regarding the use of contracted services.
R21-9-219. Staffing Ratios	The objective of this rule is to state adoption agencies must comply with the staffing ratios as described in rule. This rule also establishes the criteria OLR will use to determine if an agency is complying with the staffing ratios.
R21-9-220. Operations Manual	The objective of this rule is to require an adoption agency to have an operations manual and describes what should be included in the operations manual. This rule also directs the adoption agency to make its operations manual available to all agency personnel, and for review by clients, upon request.
R21-9-221. Adoption Agency Operations Budget; Financial Records	The objective of this rule is to establish requirements for an adoption agency in regard to adopting a budget and maintaining financial records.
R21-9-222. Annual Financial Audit	The objective of this rule is to require an adoption agency to obtain an annual, fiscal year-end audit by an independent certified public accountant. This rule also describes the information an adoption agency with an annual income of less than \$250,000 may submit in lieu of an annual, fiscal year-end audit.
R21-9-223. Insurance Coverage	The objective of this rule is to establish the minimum amounts of coverage that an adoption agency must carry in a liability insurance policy.
R21-9-224. Physical Space Requirements; Transportation of a Child	The objective of this rule is to establish that an adoption agency must not discuss confidential matters in public and is required to have sufficient physical space to meet in Arizona to ensure privacy and security. The rule also outlines the requirements for record storage, meeting areas and transportation.
R21-9-225. Protecting Confidentiality for Adoption Records	The objective of this rule is to require the adoption agency to have written policy on maintenance and security of adoption records and specifies information it must include. The rule also provides related statutes.
R21-9-226. Recordkeeping Requirements: Adoptive Children	The objective of this rule is to establish that an adoption agency is required to maintain a case record for each adoptive child and describes the specific information maintained in the case record.

R21-9-227. Recordkeeping Requirements: Adoptive Parents	The objective of this rule is to establish that an adoption agency is required to maintain a case record for each adoptive parent and describes what the case record must include.
R21-9-228. Reporting Requirements: Abuse; Adoption Agency Change; Change of Circumstances of a Child or Family	The objective of this rule is to state that an adoption agency is required to report suspected child abuse or neglect. The rule also outlines changes within the adoption agency that must be reported to DCS/OLR by the adoption agency.
R21-9-229. Closure of Adoption Agency: Record Requirements	The objective of this rule is to specify what actions the adoption agency must take when closing its agency.
R21-9-230. Birth Parent: Service Agreement; Prohibitions	The objective of this rule is to detail the requirements that an adoption agency is to follow before entering into an agreement and providing services to a birth parent. This rule also specifies information the adoption agency must provide a birth parent.
R21-9-231. Adoption Fees; Reasonableness	The objective of this rule is to establish that an adoption agency is not to charge clients more than a reasonable fee for services and outlines what an adoption agency cannot do as it pertains to fees. The rule also requires an adoption agency to have a fee policy that is shared with a client.
R21-9-232. Adoption Fee Agreement	The objective of this rule is to establish the requirement for an adoption agency to enter into a written fee agreement with an adoptive parent before providing services. This rule also provides specific information as to the components of this agreement.
R21-9-233. Monitoring: Inspections and Interviews; Compliance Audit	The objective of this rule is to establish the Department's responsibility to monitor the ongoing operations of each adoption agency.
R21-9-234. Complaints; Investigations	The objective of this rule is to establish the Department's responsibilities in response to complaints received about an adoption agency.
R21-9-235. Noncompliance Status: Corrective Action Plan	The objective of this rule is to describe the Department's responsibilities when placing an adoption agency in noncompliance status. The rule also indicates an adoption agency's responsibility to respond to a noncompliance status notification.
R21-9-236. Suspension	The objective of this rule is to establish the Department's authority to suspend a license, clarify when a license may be suspended, and state the Department's

	responsibilities. The rule also clarifies what services the adoption agency may and may not provide when their license is suspended.
R21-9-237. Revocation	The objective of this rule is to establish the Department's authority to revoke a license and clarifies when the Department may revoke a license. This rule also details the Department's and the adoption agency's responsibilities in relation to the revocation.
R21-9-238. Adverse Action: Procedures	The objective of this rule is to define an adverse action and detail the Department's responsibilities when taking an adverse action against an adoption agency.
R21-9-239. Appeals	The objective of this rule is to establish the right of an adoption agency to appeal an adverse action taken by the Department. This rule also details the adoption agency's timeframes for filing an appeal and refers OLR to Title 21, Chapter 1, Article 3 for the appeal process.
R21-9-240. International Adoptions	The objective of this rule is to establish the requirements in regards to international adoptions.

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	Explanation
R21-9-207	In 2019 A.R.S. § 46-141 amended the fingerprint and Level One fingerprint clearance card requirements to include a person licensed by the Department or employed by the licensee. The rule needs to be updated to reflect the amended statute.
R21-9-224	R21-9-224 (E) includes a weight criteria for use of the child restraint system that is not a criteria under A.R.S. § 28-907. Also, R21-9-224 (E)(3)(b) applies the child restraint system criteria to children ages five to eight years old; whereas A.R.S. § 28-907 B. refers to children ages at least five years and under eight years old. The rule needs to be updated to reflect statutory requirements.

5. **Are the rules enforced as written?** Yes No X

Rule	Explanation
R21-9-207	As mentioned in #4 of this report, A.R.S. § 46-141 was amended in 2019. The Department currently follows statutory requirements and proposes to conduct rulemaking to update the rules.

R21-9-224	As mentioned in #4 of this report, the rules in this R21-9-224 (E) are not consistent with A.R.S. § 28-907. The Department currently enforces the statute requirements and proposes to amend rules to align with statute.
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6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R21-9-202	The rules in R21-9-202 (B)(2)(c) need to clarify that an applicant who held a license within three years prior to the current application or holds a license in another state needs to comply with the requirements of this rule. Also, R21-9-202 B (9)(b) should include reference to statute, A.R.S. § 8-132, as the statute outlines further expectations.
R21-9-205	The rules R21-9-205 (A)(4) should include that an adoption agency applicant must disclose any adoption agency licenses held in another state.
R21-9-207	The rules in this Section need to be updated to include statutory changes as mentioned in #5 of this report.
R21-9-214	The rules in R21-9-214 (B)(4) need to clarify that an adoption agency's new hire must complete an authorization form to allow the adoption agency to complete a Central Registry background check.
R21-9-224	The rules in R21-9-224 (E) should reference that an adoption agency must comply with child safety restraint systems as prescribed in A.R.S. § 28-907. As mentioned in #4 and #5 of this report, R21-9-224 (E) is not consistent with statute.
R21-9-228	The rules in R21-9-228 (A)(1) need to clarify that an adoption agency is expected to report any suspicion of child abuse or neglect in accordance with A.R.S. § 13-3620.
R21-9-229	The rules in R21-9-229 (A) should refer to A.R.S. § 8-120 which clearly outlines the requirements the adoption agency must comply with when closing.
R21-9-233	The rules in R21-9-233 (B)(1) need to clarify that monitoring visits by OLR are not limited to one announced and one unannounced onsite inspection.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No ___

During the Department's exempt rulemaking process in 2015, the Department held a couple of public hearings where attendees were provided the opportunity to provide oral or written comments. Comments were received at the public hearings, on-line, and by U.S. mail. Examples of the comments included requests for greater flexibility and clarification of educational and certification requirements for staff, and suggestions for improved language concerning renewal of licenses and the conditions of written agreements with birth parents. The Department held a meeting with stakeholders to obtain clarification on and in support of their comments. The Department incorporated their comments where applicable into the final rule.

The fees covered in Article 2 were re-established in 2018. At the time of this rulemaking the Department did not receive any comments.

8. Economic, small business, and consumer impact comparison:

Title 21, Chapter 9, Articles 1 and 2 pertain to the licensure and operation of adoption agencies. A.R.S. § 41-1008 states that a fee established under an exempt rule making is effective for two years. A.R.S. § 8-126 grants the Department specific authority to charge fees for agency licensing and renewal. In 2018, the Department conducted regular rulemaking to re-establish the fees in Article 2. The Department charges an adoption agency a fee at the time of initial and renewal application. Adoption agencies assist in finding permanent homes for children in foster care and provide private adoption services (domestically and/or internationally).

The cost bearers and beneficiaries from rules in Chapter 9 include: Adoption Agencies; the Department of Child Safety; children in out-of-home care through the Department of Child Safety; the community at large. The Office of Licensing and Regulation (OLR) is a program unit within the Department of Child Safety and continues to be charged with the responsibilities that pertain to Title 21, Chapter 9. The Department does not anticipate allotting any new full-time employee positions or making changes to those currently allotted. The Department continues to believe that the current staffing and organization is adequate to implement and enforce the rules. There are no political subdivisions affected by these rules.

Agencies

Chapter 9 contains rules pertaining to licensure and operation of adoption agencies. During the 2019 calendar year, the Department did not process or issue any initial license; however, it did process and issue 19 renewal licenses, and one amended license under Chapter 9. Additionally, one adoption agency closed in the 2019 calendar year. There are no fees associated with amending or closing a license. As of September 1, 2020 there were 18 adoption agencies licensed by OLR. Of these, only five adoption agencies are also contracted with the Department to provide adoption services for children who are in the care and custody of the Department.

Department

OLR's organization and functions pertaining to processing and licensing adoption agencies remain the same as stated in the 2018 economic, small business and consumer impact statement. Costs associated with enforcement of these rules is not readily quantifiable due to the OLR's organization.

Funding for the operation of OLR is appropriated annually.

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?**

This is the first review of the rules in Title 21, Chapter 9 Articles 1 and 2. The rules in this Article were made by final exempt rulemaking and became effective on January 24, 2016.

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

The Department believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. These Articles pertain to the licensing and monitoring of adoption agencies. The rules provide the process, guidelines, and expectations when a person(s) wants to apply and maintain an adoption agency license. The Department charges a minimal fee when a person(s) applies for a license as an adoption agency. The fee for an initial application is \$400 whereas the fee for reapplying for licensure is \$225 annually. These fees have not changed nor have been increased in over 20 years. The licensed adoption agencies provide adoption services to birth parents, adoptive parents, and children up for adoption both locally and/or internationally.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

42 U.S.C. 671. The rules are not more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Agencies providing adoption services are required to be licensed. Adoption agency licenses are exempt under A.R.S. § 41-1037 and do not require a general permit.

14. **Proposed course of action**

The Department plans to request a moratorium exemption from the Governor’s Office in accordance with Executive Order 2020-02 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council’s review by September 2021.

Arizona Administrative CODE

21 A.A.C. 9 Supp. 18-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018

Title 21



ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 21. CHILD SAFETY

CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

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.

[R21-9-202.](#) [Adoption Agency License: Initial Application Package: Fee](#) [2](#) [R21-9-207.](#) [Application for License Renewal: Fee](#) [5](#)

Questions about these rules? Contact:

Name: Kathryn Blades, Deputy General Counsel

Address: Department of Child Safety
3003 N. Central Ave.
Phoenix, AZ 85012

Telephone: (602) 255-2527

E-mail: Kathryn.Blades@azdcs.gov

Or

Name: Angie Trevino, Rules Development Specialist

Telephone: (602) 255-2569

E-mail: Angelica.Trevino@azdcs.gov

Web site: <https://dcs.az.gov/about/dcs-rules-rulemaking>

The release of this Chapter in Supp. 18-4 replaces Supp. 15-4, 13 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division
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TITLE 21. CHILD SAFETY

CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

Editor’s Note: Fee rules made under the Department’s exemption in Sections R21-9-202 and R21-9-207 were effective for two years under A.R.S. § 1008. Because these rules were temporary and were due to expire, the Department made fee rules by final rulemaking in Sections R21-9-202 and R21-9-207 at 24 A.A.R. 3275 (Supp. 18-4).

Editor’s Note: Chapter 9 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R21-9-101, made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

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 R21-9-101. Definitions 2

ARTICLE 2. ADOPTION AGENCY LICENSING REQUIREMENTS

Article 2, consisting of Sections R21-9-201 through R21-9-240, made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

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CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

ARTICLE 1. DEFINITIONS**R21-9-101. Definitions**

The definitions contained in A.R.S. § 8-101 and R21-5-301 apply in this Chapter. In addition, and where inconsistent with the definitions in R21-5-301, the following definitions apply in this Chapter:

1. "Adoption agency applicant" means the individual completing an application for a license to operate an adoption agency in Arizona on behalf of the individual or on behalf of the adoption agency. "Adoption agency applicant" also includes the adoption agency for which the individual is applying.
2. "Child restraint system" means an add-on child restraint system, a built-in child restraint system, a factory-installed built-in child restraint system, a rear-facing child restraint system, or a booster seat.
3. "Child welfare field" means an area of endeavor that provides a set of services designed to protect children and encourage family stability. These typically include investigation of alleged child abuse and neglect, foster care, adoption services and services aimed at supporting at-risk families so they can remain intact.
4. "Client" means a prospective adoptive parent and the child who is or would be the subject of an adoption performed by the adoption agency.
5. "Human services field" means any area of study that moves the human experience forward; including, psychology, sociology, social work, medicine, and education.
6. "Office of Licensing and Regulation" or "OLR" means the administration within DCS that is responsible for reviewing and evaluating applications for licensure; supervising and monitoring licensees; and completing all official licensing actions, including issuing, denying, amending, suspending, and revoking a license.
7. "Person" means a corporation, company, partnership, firm, association, or society, as well as a natural person.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

ARTICLE 2. ADOPTION AGENCY LICENSING REQUIREMENTS**R21-9-201. Who Shall Be Licensed**

- A. Only the following may perform the adoption services listed in subsection (B):
 1. A person licensed as an adoption agency;
 2. An employee of or an independent contractor for an adoption agency;
 3. A person acting under the direct supervision and control of an adoption agency; or
 4. The Department under A.R.S. § 8-131.
- B. Only the persons or entities listed in subsection (A) may perform the following adoption services:
 1. Recruiting a birth parent to place a child through a particular adoption agency;
 2. Accepting a birth parent's relinquishment and consent to adoption;
 3. Accepting physical custody of a child for placement into an adoption placement;
 4. Placing a child in an adoptive home;
 5. Monitoring, supervising, or finalizing an adoption placement; and
 6. Providing networking or matching services for a birth parent, an adoptive parent, or a child.
- C. Notwithstanding subsections R21-9-201(A) and (B), attorneys licensed to practice law in the state of Arizona may participate

in direct placement adoptions to the extent allowed by A.R.S. Title 8, Chapter 1, Article 1.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-202. Adoption Agency License; Initial Application Package; Fee

- A. A person who wants to operate an adoption agency shall initiate the licensing process by completing an application package for an adoption agency license.
- B. A complete application package for an initial adoption agency license shall contain the information and the supporting documentation listed in this subsection:
 1. Identification and background information, including the following information for the adoption agency, facility, and administrators:
 - a. Name, address, telephone, and fax numbers for the adoption agency and all offices operated by the adoption agency;
 - b. Name, title, business address, telephone and fax numbers, and email address of:
 - i. The person who serves as the adoption agency administrator as prescribed in R21-9-211;
 - ii. The person who serves as the Social Services Director as prescribed in R21-9-212;
 - iii. The person with delegated authority to act when the adoption agency administrator is absent;
 - iv. The person in charge of each separate office;
 - v. The registered agent, if applicable; and
 - vi. Persons holding at least a 10 percent ownership interest in the adoption agency applicant;
 - c. The educational qualifications and work history for each person identified in R21-9-214, with that person's attached resume or employment application;
 - d. A list of the members of the adoption agency's governing body required by R21-9-210, including name, address, position in the adoption agency, term of membership, and any relationship to the adoption agency applicant;
 - e. If applicable, a written description of any proceedings pending or filed, brought against the adoption agency applicant or a person listed in R21-9-210 through R21-9-214, adoption agency employees, partners, or independent contractors, including those held in this state or another state or country; for denial, suspension, or revocation of a license or certificate for provision of:
 - i. Adoption services; or
 - ii. Social services, including child welfare, child care, or any other programs or services to children, elderly, or vulnerable adults; and
 - f. If applicable, a written description of any litigation in which the adoption agency applicant or a person listed in R21-9-210 through R21-9-214 is or has been a party, including, collection matters and bankruptcy proceedings, during the 10 years preceding the date of application for the adoption agency license.
 2. Business organization.
 - a. An organizational chart for the adoption agency and each separate office, showing administrative structure, lines of authority, and staff;
 - b. Business organization documents appropriate to the adoption agency applicant, including:

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- i. Articles of incorporation,
 - ii. By-laws,
 - iii. Articles of organization, or
 - iv. Partnership documents, such as the Partnership Agreement;
 - c. Annual reports for the preceding three years if the adoption agency has been in existence for three or more years;
 - d. For corporations, or limited liability companies, a certificate of good standing from the Arizona Corporation Commission;
 - e. A copy of any license or authorization to perform adoption services in a foreign country; and
 - f. A consent allowing any out-of-state or foreign licensing authority to release information on the adoption agency applicant to OLR.
3. Staff.
 - a. A list of the adoption agency applicant's paid or unpaid staff, including:
 - i. Name,
 - ii. Position or title,
 - iii. Degrees,
 - iv. Certificates,
 - v. Licenses held,
 - vi. Business address,
 - vii. Date of hire,
 - viii. Date of submission for fingerprinting and criminal background clearance, and
 - ix. If contracted with the Department, a Central Registry check;
 - b. Obtain and provide to the Department evidence that all staff, interns, and volunteers have submitted fingerprints and criminal background information as prescribed in A.R.S. § 46-141, R21-9-214, and R21-9-215.
 4. Financial Stability.
 - a. A written, proposed operating budget for startup and a projected or annual budget for 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. Letters of commitment from financial backers or investors,
 - v. Grants, and
 - vi. Authorization for a line of credit;
 - e. If the adoption agency applicant, the adoption agency administrator, a Board Member, or any adoption agency employee or partner has operated any adoption agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that adoption 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 adoption agency applicant has insurance coverage as prescribed in R21-9-223.
5. Program.
 - a. Informational, marketing, or advertising material about the adoption agency;
 - b. Program description, including:
 - i. All adoption services the adoption agency applicant intends to provide;
 - ii. The fee the adoption agency applicant will charge for each service;
 - iii. The cost to the adoption agency applicant of providing each service;
 - iv. The time in the adoption process when the adoption agency applicant will require a client to pay the fee described in R21-9-231;
 - v. The anticipated number of clients the adoption agency applicant will serve; and
 - vi. The methods the adoption agency applicant will use to recruit birth parents and prospective adoptive parents; and
 - c. A written explanation of how the adoption agency applicant will provide adoption services, including:
 - i. The number and description of staff who will provide the service, and
 - ii. Staff training requirements.
 6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices, which the adoption agency applicant will use with or provide to a client, including:
 - a. Adoption agency application for services;
 - b. Adoptive parent certification application;
 - c. Fee policy and schedule as prescribed by R21-9-231;
 - d. Sample birth parent relinquishment and consent form;
 - e. Informational or advertising brochures;
 - f. Sample fee agreement;
 - g. Sample birth parent agreement letter;
 - h. Intake form;
 - i. Sample case file;
 - j. Court report format; and
 - k. Statistical report.
 7. Sample Files. A sample of the type of filing format the adoption agency applicant will utilize for personnel files as prescribed in R21-9-216, and client files as prescribed in R21-9-226 and R21-9-227.
 8. Policies and Procedures. Copies of the adoption agency applicant's internal policies and operations manual.
 9. Physical site and environment.
 - a. The floor plan for each office or location designated for conducting private discussions, interviews, and meetings;
 - b. A description of the adoption agency applicant's computer security system and the adoption agency applicant's confidentiality safeguards; and
 - c. Registration and inspection certificates for all vehicles used to transport a client or children.
 10. Miscellaneous.
 - a. A signed, written statement authorizing OLR to investigate the adoption agency applicant;
 - b. The signature, under penalty of perjury, of the adoption agency administrator or authorized person submitting the application, attesting to the truthfulness of the information contained in the application;
 - c. The date of application; and

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- d. Board or partnership meeting minutes for the past three years if the adoption agency has been in existence for three or more years.
- 11. Fee. Pay a non-refundable, initial application fee of \$400.
- C. An adoption agency that does not have or maintain all or part of the supporting documentation listed in this Section shall so indicate in a written statement filed with the application.
 - a. The adoption agency applicant shall have 60 days to supply the missing items or information to OLR.
 - b. The time-frame for the administrative completeness review shall be suspended from the date OLR issues the Notice of Incomplete Application to the date that OLR receives the missing item or information.
 - c. If the adoption agency applicant does not supply the requested items or information within 60 days of the date of the Notice of Incomplete Application, OLR shall close the file. Once closed, the adoption agency applicant may reapply for licensure.
 - d. If the adoption agency applicant supplies the required items and information to OLR within 60 days, OLR shall conduct a substantive review of the application.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016, for two years under A.R.S. § 41-1008 (Supp. 15-4). A new Section was made by final rulemaking to re-establish the fee before the rule expired at 24 A.A.R. 3275, effective January 6, 2019 (Supp. 18-4).

R21-9-203. Additional Requirements for Licensing; Out-of-state and Foreign Adoption Agencies

- A. An out-of-state adoption agency or an adoption agency that conducts foreign adoptions that wishes to become licensed in Arizona as an adoption agency shall comply with all requirements of R21-9-202.
- B. In addition to the documentation required by R21-9-202, the out-of-state or foreign adoption agency applicant shall file the following documents with OLR:
 - 1. A copy of each license or authorization to perform adoption services the adoption agency applicant holds in states other than Arizona or in a foreign country;
 - 2. A signed, written consent allowing any out-of-state or foreign licensing authority to release information on the adoption agency applicant to OLR; and
 - 3. A written description of any license suspension or revocation proceedings pending, filed, or brought against:
 - a. The adoption agency applicant;
 - b. The adoption agency applicant's owner, if the adoption agency applicant is acting as an individual or a sole proprietor;
 - c. The partners of the adoption agency applicant, if the adoption agency applicant is a partnership; and
 - d. The directors, officers, and shareholders holding more than a 10 percent ownership interest in the adoption agency applicant, if the adoption agency applicant is a corporation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-204. Department Procedures for Processing License Applications; Licensing Time Frames

- A. In this Section, a complete application package means:
 - 1. For an initial license, the items listed in R21-9-202 for an in-state adoption agency and R21-9-203 for an out of state adoption agency or an adoption agency engaged in foreign adoptions; or
 - 2. For a renewal license, the items listed in R21-9-207.
- B. Within 15 days of receiving an initial or renewal license application package, OLR shall conduct an administrative review to determine whether all required documentation and information has been submitted. Within the 15-day administrative review time-frame:
 - 1. If the application is complete, OLR shall immediately move the application forward for a substantive review; or
 - 2. If the application is incomplete, OLR shall issue a Notice of Incomplete Application to the adoption agency applicant containing a list of items and information needed to complete the application.

- C. An adoption agency applicant whose file has been closed under subsection (B)(2)(c) and who reapplies no later than 90 days after the date of the notice closing the application, may reopen the application provided:
 - 1. The Adoption agency applicant schedules a conference with OLR, and
 - 2. The Adoption agency applicant provides to OLR the missing information or items identified in the Notice of Incomplete Application.
- D. Within the 90 days following the administrative completeness review of an application, and if the application is complete, OLR shall complete a substantive review to evaluate the adoption agency applicant's fitness for licensure. Within the 90-day substantive review time-frame, OLR:
 - 1. May request that the adoption agency applicant provide additional information if needed to evaluate the suitability of the adoption agency applicant for licensure.
 - a. The adoption agency applicant shall have an additional 15 days to provide the information to OLR.
 - b. The time-frame for the substantive review shall be suspended from the date OLR requests additional information to the date OLR receives the information.
 - 2. Shall make the licensing decision under R21-9-205.
- E. Within an overall time-frame of 105 days upon receipt of a complete application, OLR shall:
 - 1. Complete an administrative review of an application,
 - 2. Complete a substantive review of an adoption agency applicant's fitness, and
 - 3. Notify the adoption agency applicant of the decision to issue or deny a license.
- F. For the purpose of A.R.S. § 41-1073, OLR establishes the following licensing time-frames for both an initial and renewal license:
 - 1. Administrative completeness review time-frame: 15 days;
 - 2. Substantive review time-frame: 90 days; and
 - 3. Overall time-frame: 105 days.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-205. License: Issuance; Denial

- A. Prior to issuing a license to an adoption agency applicant, OLR shall:
 - 1. Review the application package;
 - 2. Inspect the adoption agency applicant's place of business, records, accounting records, and system for client files;
 - 3. Interview the adoption agency applicant's staff, as necessary to familiarize the OLR representative with the adoption agency applicant's operations; and

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4. For out-of-state adoption agency applicants, and foreign adoption agencies, verify that the adoption agency applicant is licensed out-of-state or authorized to conduct foreign adoptions, as applicable, and investigate any complaints asserted against the adoption agency applicant in other states or countries.
- B. Prior to issuing a license, OLR may submit the adoption agency applicant's start-up, operating, or annual budget required in R21-9-202 for audit verification.
- C. OLR may issue a license to an adoption agency applicant who:
 1. Has complied with all application and inspection requirements of this Chapter; and
 2. Demonstrates that it:
 - a. Has sufficient capital to pay all start-up costs;
 - b. Has sufficient capital, personnel, expertise, facilities, and equipment to provide the services it plans to offer;
 - c. Does not intend to charge unreasonable fees; and
 - d. Complies with the requirements of this Chapter and A.A.C. Title 21, Chapter 5, Article 4.
- D. OLR may deny a license to:
 1. An adoption agency applicant that had a license revoked by any state or foreign country;
 2. An adoption agency applicant that employs personnel whose fingerprint background check shows that the employee has been convicted of or is awaiting trial on an offense listed in A.R.S. § 46-141;
 3. An adoption agency applicant that does not comply with one or more of the standards listed in subsection (C);
 4. An adoption agency applicant that has intentionally or recklessly jeopardized the well-being of its client;
 5. An adoption agency applicant that has a history or pattern of violations of applicable adoption statutes or rules; or
 6. An adoption agency applicant that violates the ICPC or ICWA during a licensing year.
- E. When OLR denies a license, OLR shall send the adoption agency applicant written notice explaining the reason for denial, and the adoption agency applicant's right to seek a fair hearing.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-206. License: Term; Non-transferability

- A. OLR shall issue a license only to the adoption agency for which application is made and for the location shown on the application.
- B. A license expires one year from the date of issuance.
- C. A license shall not be transferred or assigned and shall expire upon a change in adoption agency ownership.
- D. For the purpose of this Section, a change in ownership shall include the following events:
 1. Sale or transfer of the adoption agency,
 2. Bulk sale or transfer of the adoption agency's assets or liabilities,
 3. Placement of the adoption agency in the control of a court appointed receiver or trustee,
 4. Bankruptcy of the adoption agency,
 5. Change in the composition of the partners of an adoption agency organized as a partnership,
 6. Sale or transfer of a controlling interest in the stock of a corporate adoption agency, or
 7. Loss of an adoption agency's nonprofit status.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-207. Application for License Renewal; Fee

- A. No earlier than 90 days and no later than 45 days prior to the expiration date of a license, an adoption agency may apply to OLR for license renewal.
- B. The renewal application shall be on a Department form containing the information listed in R21-9-202 and R21-9-203, as applicable.
- C. The adoption agency shall submit evidence that each current employee has obtained a new fingerprint clearance card every six years following original clearance.
- D. An adoption agency shall submit copies of the supporting documents listed in R21-9-202 if the adoption agency has changed, amended, or updated such documents since the adoption agency last renewed its license.
- E. With a renewal application, the adoption agency shall also submit a non-refundable renewal fee of \$225 and the following documentation:
 1. A current financial statement;
 2. A copy of the adoption agency's current operating budget and a recent audit report required by R21-9-222 or if applicable, the documentation required by R21-9-222 subsection (C);
 3. Copies of any written complaints the adoption agency has received about its performance during the expiring license year; and
 4. A written description of any changes in program services or locations, or the population served by the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016, for two years under A.R.S. § 41-1008 (Supp. 15-4). A new Section was made by final rulemaking to re-establish the fee before the rule expired at 24 A.A.R. 3275, effective January 6, 2019 (Supp. 18-4).

R21-9-208. Renewal License: Issuance

- A. OLR shall process a renewal application package pursuant to the procedures described in R21-9-204 and R21-9-205.
- B. In addition to conducting an investigation as prescribed in R21-9-205, OLR may:
 1. Interview adoption agency clients and references,
 2. Observe adoption agency staffings, and
 3. Conduct field visits to the adoption agency offices.
- C. In determining whether to renew a license, OLR may consider the licensee's past history from other licensing periods, and shall consider a repetitive pattern of violations of applicable adoption statutes or rules as evidence that the adoption agency is unable to meet the standards for obtaining a license.
- D. OLR may renew an adoption agency's license when the adoption agency:
 1. Demonstrates that it meets the standards described in this Chapter,
 2. Has complied with the requirements of this Article and A.A.C. Title 21, Chapter 5, Article 4 during the expiring period of licensure, and
 3. Has corrected any prior circumstances that resulted in non-compliance status.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-209. Amended License

- A. An adoption agency that seeks to change its name, address, or offices, without a change in ownership, shall apply to OLR for

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an amended license at least 14 days prior to the effective date of the change.

- B. The application shall be in writing and shall specify the information to be changed.
- C. So long as the change does not cause the adoption agency to fall out of compliance with the standards listed in this Article and A.A.C. Title 21, Chapter 5, Article 4, OLR shall issue an amended license.
- D. The amended license shall expire at the end of the adoption agency's current licensing year.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-210. Governing Body

- A. The adoption agency shall have a governing body to oversee the operations, policies, and practices of the adoption agency and its facilities.
- B. The governing body shall be:
 1. The board of directors for any adoption agency formed as a corporation;
 2. The individual owner of any adoption agency that is a sole-proprietorship;
 3. The members of a limited liability company; or
 4. The partners in a partnership.
- C. The governing body shall:
 1. Establish the adoption agency's policies and oversee the implementation of those policies;
 2. Ensure that the adoption agency has the capital, physical facilities, staff, and equipment to effectively implement the adoption agency's policies and adoption program;
 3. Ensure that the adoption agency complies with:
 - a. All legal agreements to which the adoption agency is a party; and
 - b. All relevant federal, state, and local laws;
 4. Review and approve the adoption agency's annual operating budget required by R21-9-221 and the annual audit required by R21-9-222, or, if applicable, the documentation required by R21-9-222 subsection (C); and
 5. Notify OLR before making any substantial changes to the adoptions program set out in the adoption agency's operations manual.
- D. The adoption agency shall advise OLR in writing of any changes in composition of the governing body within 30 days of the change.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-211. Adoption Agency Administrator

- A. The adoption agency shall have an administrator who is responsible for the adoption agency's business operations.
- B. The Administrator shall have the education and experience described in this subsection.
 1. A bachelor's degree from an accredited college or university and two years of professional experience in a human services field, one year of which shall have been in a supervisory or administrative position;
 2. A master's or doctorate degree from an accredited graduate school in business, public administration, or a human services field, and one year of professional experience in the human services field; or
 3. Five years of experience as the administrator in a program in a human services field.
- C. The Administrator shall:
 1. Oversee development and implementation of the adoption agency's policy and procedures for program and fiscal operations;
 2. Ensure that the adoption agency achieves and maintains compliance with the requirements of this Article;
 3. Oversee hiring, evaluation, and discharge of adoption agency personnel in accordance with the adoption agency's established personnel policies and this Article; and
 4. Establish and supervise working relationships with other social service agencies within the community.
- D. An Administrator who directly supervises adoption activities shall also meet the requirements for a social services director prescribed in R21-9-212.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-212. Social Services Director

- A. The adoption agency shall have a social services director who is responsible for the adoption agency's casework and family services.
- B. The social services director shall have the following education and experience:
 1. A bachelor's degree in social work or a related human services field from an accredited college or university and three years of professional experience in services to children and families, two years of which shall be in adoption services;
 2. A master's degree in social work or a related human services field from an accredited college or university and a minimum of two years of professional experience in services to children and families; or
 3. Five years of experience as the director in a program in a child welfare field.
- C. The social services director shall, either personally or through a designee:
 1. Supervise, manage, train, and evaluate all social work staff members and consultants;
 2. Approve decisions regarding family and child eligibility for service, maternity and child care, transportation and placement arrangements, finalization, and any other changes in a child's legal status; and
 3. Implement the adoption agency's adoption program and services.
- D. If the social services director delegates responsibility under subsection (C), the social services director shall personally supervise the designee and shall oversee the performance of the duties described in subsection (C).
- E. If the social services director performs the duties of an adoption agency administrator, the director shall also meet the requirements for an adoption agency administrator prescribed in R21-9-211.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-213. Social Workers

- A. The adoption agency shall have social workers sufficient to meet the ratio requirements prescribed in R21-9-219.
- B. A social worker shall have the following qualifications:
 1. A bachelor's degree in social work or a related human services field from an accredited college or university and two years of professional experience in a human services field;

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2. A master's degree in social work or in a related human services field from an accredited college or university;
 3. An associate's or a two-year degree from an accredited educational institution in a human services or child welfare field and five years' experience engaged in the activities listed in subsection (C); or
 4. Ten years experience in a human services or a child welfare field engaged in the activities listed in subsection (C).
- C. A social worker shall:
1. Maintain or supervise the maintenance of up-to-date case records on cases assigned to the worker;
 2. Prepare certification and placement reports and home studies for adoptive applicants and parents, and such other reports as the court may require; and
 3. Provide pre-placement, placement, post-placement, or post-adoption services to a client.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-214. Adoption Agency Employees: Hiring; References; Fingerprinting

- A. An adoption agency shall obtain an application for employment or a resume from each employee, or contracted employee. The application or resume shall contain, at a minimum, the following information on the applicant:
1. Name and current address and telephone number;
 2. Educational history;
 3. Degrees or certifications held;
 4. Work history for five years prior to the date of the application, and the reasons for leaving each prior job;
 5. A summary of all prior experience the applicant has had in the area for which the applicant is seeking employment;
 6. A minimum of three professional references, preferably of prior or current supervisors;
 7. A minimum of three personal references; and
 8. A list of any criminal convictions, excluding minor traffic violations.
- B. An adoption agency shall not hire an applicant for employment until:
1. The adoption agency has personally contacted at least two of the applicant's professional references and one of the applicant's personal references;
 2. The adoption agency has verified that the applicant has the skills and training necessary to perform the task for which the adoption agency is hiring the applicant;
 3. The applicant has submitted to a fingerprint and criminal records check as required by A.R.S. § 46-141 and A.A.C. Title 21, Chapter 1, Article 4; and
 4. If contracted with the Department, the applicant has passed a Central Registry check.
- C. The adoption agency shall not knowingly hire or retain any staff, member, including a volunteer or intern, who is awaiting trial on, or has been charged with, been convicted of, pled guilty to, or entered into a plea agreement regarding an offense listed in A.R.S. § 46-141.
- D. The adoption agency shall ensure that any staff required to have a fingerprint clearance card shall obtain a new card every six years after initial issuance.
- E. The adoption agency shall have written job descriptions for all employee and volunteer positions in the adoption agency. The job descriptions shall include the essential functions of the job and any minimum qualifications or training required for the position.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-215. Adoption Agency Volunteers; Interns

An adoption agency that uses volunteers or student interns shall follow the requirements of this Section.

1. An appropriate employee shall directly supervise each volunteer or intern. As used in this subsection, the term "appropriate" shall mean adoption agency personnel with skills and training to guide the volunteer or intern in the performance of the designated tasks.
2. The adoption agency shall subject each volunteer or intern who renders direct services to a client, to the same fingerprint clearance card requirements and reference checks the adoption agency performs on adoption agency employees under R21-9-214.
3. For each volunteer or intern, the adoption agency shall maintain a record of fingerprint clearance, reference check information, and any training provided. The adoption agency shall retain the record for three years following the volunteer's or intern's termination with the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-216. Personnel Records

- A. The adoption agency shall maintain a personnel file for each adoption agency employee. The file shall contain:
1. The employee's resume or written application for employment;
 2. Documentation of the reference checks required by R21-9-214 and R21-9-215;
 3. Evidence of a fingerprint clearance card and criminal records clearance;
 4. Results of a Central Registry check;
 5. A record of the expiration date and number of the employee's driver's or chauffeur's license, if the employee transports a client;
 6. Copies of the employee's professional credentials or certifications, if relevant to the employee's job functions;
 7. Documentation of initial and ongoing training the employee has received;
 8. Periodic job performance evaluations; and
 9. Dates of employment and separation, and reasons for separation.
- B. The adoption agency shall maintain employee personnel records for at least three years following the employee's separation from the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-217. Training Requirements

- A. An adoption agency shall provide initial and ongoing training for professional employees.
1. Initial training shall include orientation to the adoption agency and any of the adoption agency's and the Department's policies and procedures that are relevant to the employee's job.
 2. Ongoing training shall include a minimum of 14 hours of annual training in the following, or related, subject areas:
 - a. Adoption statutes and rules,
 - b. Adoption agency and Department policies and procedures,
 - c. Confidentiality, and

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- d. The specific subject matter of the employee's job.
- B.** The adoption agency shall document all training in the employee's personnel file.
- C.** As used in this Section, "professional employee" shall mean any person who renders services directly to a client.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-218. Contracted Services

- A.** When an adoption agency provides adoption services through persons who are not adoption agency employees, volunteers, or interns, the adoption agency shall retain only external professionals or consultants who are certified, licensed, or otherwise meet the qualifications described in A.A.C. Title 21, Chapter 5, Article 4, to provide such services.
- B.** The adoption agency shall not require a client to use medical, legal, psychological, psychiatric, or other professionals or consultants used or recommended by the adoption agency. The adoption agency may use consultants or persons selected by the adoption agency's client, so long as the consultant designated by the client has the education, experience, or certification required to render the service.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-219. Staffing Ratios

- A.** An adoption agency shall have sufficient staff to satisfy:
1. All statutory requirements for provision of adoption services;
 2. All applicable requirements of this Article and A.A.C. Title 21, Chapter 5, Article 4; and
 3. All requirements included in the adoption agency's own operating and procedural manuals, policies, or guidance documents.
- B.** To determine sufficiency under subsection (A), OLR shall consider:
1. Complaints made against the adoption agency;
 2. The complexity of the individual needs of the clients served by the adoption agency;
 3. The professional training and experience of the adoption agency's staff;
 4. The specific functions assigned to individual adoption agency staff;
 5. The geographic area served by the adoption agency and any travel time required for adoption agency staff;
 6. The respective amounts of time staff devote to various functions and responsibilities, including provision of services, court appearances, case documentation, professional training and development, and administrative tasks; and
 7. Other similar factors bearing on caseload distribution.
- C.** Notwithstanding any other provision of this Article, a social worker whose caseload is predominantly a caseload of children with special needs shall not have a caseload in excess of 20 children.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-220. Operations Manual

- A.** An adoption agency shall have a written operations manual, which shall include:
1. A statement of the adoption agency's purpose, philosophy, and program;

2. A list of any eligibility requirements for a client;
 3. A description of services provided to clients and the name of any person or entity providing the service, if different from the adoption agency and its employees;
 4. An organizational chart explaining the adoption agency's lines of authority;
 5. Intake policies and procedures;
 6. The operational procedures the adoption agency follows for delivery of services;
 7. Confidentiality policies and procedures;
 8. Staff training policy;
 9. Policy for use of volunteers;
 10. Policy on student and intern placement;
 11. Policy and procedures to be followed in the event of adoptive placement disruption;
 12. Policy for recruitment and selection of adoptive families; and
 13. Policy for transferring files if the adoption agency goes out of business, including designated personnel or positions to handle the transfer.
- B.** The adoption agency shall make the operations manual available to all adoption agency personnel and shall ensure that personnel are familiar with and trained in those policies and procedures relevant to their job functions.
- C.** The adoption agency shall make the operations manual available for review by a client, upon request.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-221. Adoption Agency Operations Budget; Financial Records

- A.** Before the start of the adoption agency's fiscal year, the Governing Body shall adopt a budget that shall reflect sufficient funds to pay the costs of the adoption agency's program and shall be based on the audit report prepared in compliance with R21-9-222, or, if applicable, the documentation required by R21-9-222 subsection (C).
- B.** The adoption agency shall operate within the budget adopted by the Governing Body.
- C.** The adoption agency shall maintain financial records of receipts, disbursements, assets, and liabilities. The adoption agency shall maintain its financial records in accordance with generally accepted accounting principles; the records shall accurately reflect the adoption agency's financial position.
- D.** The adoption agency shall maintain records showing the following information:
1. Each adoptive parent's original contract date with the adoption agency;
 2. Fees that each adoptive parent has paid to the adoption agency and the date of such payments; and
 3. Fees that the adoption agency has charged to the adoptive parent.
- E.** The adoption agency shall make all records described in this Section available for inspection by OLR at periodic inspections, or at other reasonable times upon Department request.
- F.** The adoption agency shall retain financial records for ten years, including the records involved in an audit, following completion of the audit.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-222. Annual Financial Audit

- A.** An adoption agency shall obtain an annual, fiscal year-end, financial audit by an independent certified public accountant.

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The accountant shall conduct the audit in accordance with generally accepted auditing standards.

- B.** The adoption agency shall obtain from the auditor a written audit report that shall include the following financial information:
1. Income statement,
 2. Balance sheet,
 3. Statement of cash flows,
 4. Statement of monies or other benefits the adoption agency has paid or transferred to other business entities or individuals affiliated with the adoption agency, and
 5. A record of any financial transactions between the adoption agency and any other adoption agency.
- C.** Notwithstanding subsections (A) and (B), for adoption agencies with an annual income of less than \$250,000, rather than submit the financial audit required in subsections (A) and (B), the adoption agency shall:
1. Provide verifiable information that allows OLR to evaluate the adoption agency's financial stability.
 2. Maintain acceptable documentation that includes:
 - a. Annual fiscal audit;
 - b. Six month current bank statement;
 - c. Statements from lines of credit; and
 - d. The previous year's tax return.
- D.** OLR may request additional information that would allow OLR to evaluate the adoption agency's financial stability.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-223. Insurance Coverage

- A.** An adoption agency contracted with the State shall have insurance coverage as required by the State contract in addition to the requirements of this Section.
- B.** An adoption agency shall have insurance coverage that provides protection against financial loss as required by this Section, including insurance coverage with the minimum scope and limits of liability not less than those stated below.
1. Commercial General Liability – Occurrence Form Coverage including bodily injury, property damage, personal injury, and broad form contractual liability:
 - a. General Aggregate \$2,000,000;
 - b. Products – Completed Operations Aggregate \$1,000,000;
 - c. Personal and Advertising Injury \$1,000,000;
 - d. Blanket Contractual Liability – Written and Oral \$1,000,000;
 - e. Fire Legal Liability \$50,000;
 - f. Each Occurrence \$1,000,000; and
 - g. The policy shall include coverage for sexual abuse and molestation.
 2. Automobile Liability. The policy shall cover bodily injury and property damage for any owned, hired, or non-owned vehicle used in the performance of licensee's operations and shall have a Combined Single Limit (CSL) coverage of \$1,000,000.
 3. Worker's Compensation and Employers' Liability.
 - a. Workers' Compensation coverage shall comply with state statutory requirements.
 - b. Employers' Liability.
 - i. Each Accident \$500,000;
 - ii. Disease – Each Employee \$500,000; and
 - iii. Disease – Policy Limit \$1,000,000.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-224. Physical Space Requirements; Transportation of a Child

- A.** An adoption agency shall not discuss confidential information with a client in a public setting.
- B.** An adoption agency shall have available a physical space in Arizona that provides privacy and security.
- C.** Meeting Space.
 1. Available space. The adoption agency shall maintain at its offices in Arizona or have available a local meeting space for interviewing children and families and for supervisory conferences.
 2. Confidentiality. The adoption agency meeting space shall provide privacy for interviews and discussion of confidential information.
 3. Safety. The adoption agency meeting space shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
 4. Telephone. The adoption agency meeting space shall have telephone service.
- D.** Records Storage Space.
 1. The adoption agency shall maintain or have available a physical space for records storage that protects confidentiality and provides security.
 2. The records storage space may be a space for hard copy records or a secure server with encryption capabilities for digital records.
 3. The adoption agency storage space shall provide security against theft, unauthorized release, security breach, damage, and loss of records.
 4. The adoption agency storage space shall allow for immediate protection of confidential information.
 5. If the adoption agency contracts for storage space, the contract shall include:
 - a. A provision that all records are owned solely by the adoption agency and shall not be used or disseminated by the contractor in any way;
 - b. A provision that the contractor shall return all records immediately upon cessation of the contract; and
 - c. A provision requiring security against theft, unauthorized release, security breach, damage, and loss of records.
- E.** Transportation. When an adoption agency transports a child or directs the transportation of a child, the adoption agency shall ensure that the vehicle, at a minimum:
 1. Is maintained in safe operating condition;
 2. Is properly licensed, registered, and has liability insurance; and
 3. Has passenger safety restraints available and:
 - a. Each child less than the age of five years or weighing less than 40 pounds is properly secured in a child car seat and child restraint system that is appropriate to the height, weight, and physical condition of the child;
 - b. Each child five to eight years of age who weighs more than 40 pounds, but is less than four feet nine inches in height is properly secured in a child restraint system that is appropriate to the height, weight, and physical condition of the child;
 - c. Each child not covered by subsections (a) and (b) is properly secured with a seat belt;
 - d. Each child with a disability that prevents the child from maintaining head and torso control while sitting is secured in a car bed, harness, or other device designed to protect the child during transportation; and

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- e. If a child is transported in a wheelchair, the child is properly secured with a floor-mounted seat belt, and the wheelchair is properly immobilized using lock-down devices.
- F. An adoption agency shall not leave a child unattended during transportation if the child:
 - a. Is less than seven years of age;
 - b. Has a developmental disability; and
 - c. Is more than seven years of age if the adoption agency has determined, and documented in the child's record, that the child is physically and emotionally incapable of traveling alone;
- G. The adoption agency shall ensure that the adoptive parent has all of the equipment in place and properly installed to meet the requirements of subsection (E) prior to placement.
- H. An adoption agency shall ensure the following safety requirements for drivers selected by the adoption agency to transport a child:
 - 1. The driver has a valid driver license; and
 - 2. The driver practices safe, defensive driving and obeys all traffic laws.
- I. A child shall not be transported in a truck bed, cargo area, camper, or in a trailer attached to a motor vehicle.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-225. Protecting Confidentiality of Adoption Records

The adoption agency shall have and follow a written policy for the maintenance and security of adoption records. The policy shall be consistent with A.R.S. §§ 8-120, 8-121, and 36-2903.01(Q) and shall specify:

1. The personnel responsible for supervision and maintenance of records;
2. The persons who shall and may have access to the records;
3. The procedures for immediately securing confidential information;
4. The procedures for authorizing release of records;
5. The procedures for release of records;
6. The procedures for security breach or loss of adoption records; and
7. The procedures for transferring records.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-226. Recordkeeping Requirements: Adoptive Children

The adoption agency shall maintain a case record for each adoptive child. Except as otherwise provided in A.R.S. § 8-129, the record shall be divided into two sections as follows:

1. Non-identifying information as required by A.R.S. § 8-129; and
2. Identifying information which shall include:
 - a. Tapes, videos, or photos of the adoptive child or birth parent;
 - b. Legal documents and reports required for adoption;
 - c. Social, physical, mental, and educational history of the child's birth family;
 - d. Social, physical, mental, and educational history of the adoptive child; and
 - e. A summary of all action taken to prepare the child for placement in the adoptive home.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-227. Recordkeeping Requirements: Adoptive Parents

The adoption agency shall maintain a case record for each adoptive parent. If the adoptive parent is a member of the same family as another adoptive parent, the adoption agency can maintain one file for the adoptive family. The file shall include:

1. Documentation showing that the adoptive parent received the orientation described in R21-5-403,
2. The adoptive parent's application for certification,
3. The adoptive parent's certification report and any recertification reports,
4. A copy or description of the non-identifying information the adoption agency has provided to the adoptive parent pursuant to A.R.S. § 8-129(A), and
5. A summary of the adoptive placement decision and the pre-placement and post-placement contacts with the adoptive family and the adoptive child.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-228. Reporting Requirements: Abuse; Adoption Agency Change; Change of Circumstances of a Child or Family

A. During the period of time that an adoption agency is providing services to an adoptive child or family, the adoption agency shall:

1. Immediately report any suspected or alleged incident of abuse or neglect of an adoptive child to the Department; and
2. Immediately notify an adoption agency licensing representative in OLR if an adoptive child dies or suffers a serious illness, bodily injury, or psychiatric episode.

B. An adoption agency shall notify OLR orally of any of the following changes or events within 24 hours after the adoption agency learns of their occurrence and shall submit written notification to OLR within seven days:

1. Permanent or temporary closure of the adoption agency or any part thereof;
2. A criminal conviction or plea agreement involving any adoption agency staff member, including a volunteer and intern, excluding minor traffic violations;
3. Filing of a lawsuit against the adoption agency;
4. Filing of a lawsuit against adoption agency personnel when the lawsuit relates to or is likely to adversely affect the provision of adoption services;
5. Damage to adoption agency facilities that substantially disrupts the program or the adoption agency's accessibility to a client; and
6. Knowledge of any child placement that the adoption agency reasonably believes is not permitted by law.

C. The adoption agency shall notify OLR in writing at least 30 calendar days prior to any of the following proposed changes and events, if known:

1. Any plans to reorganize the adoption program that would involve changes in target population, geographic area, services, or eligibility, and the reasons for the changes;
2. Any change in the identity of the adoption agency administrator or social services director; or
3. Any change in ownership as described in R21-9-206(D).

D. Change of Circumstances of a Child or Family.

1. When there is a change in the adoptive circumstances of a child or family listed on the Adoption Registry, the adoption agency shall notify the Department of the change within five work days of receipt of information about the changed circumstances.

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2. For the purpose of this subsection, a change in adoptive circumstances include the following events:
 - a. Placement of a child,
 - b. Loss or renewal of certification, and
 - c. Disruption or failure of a placement.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-229. Closure of Adoption Agency: Record Requirements

- A. An adoption agency shall not destroy any files, records, reports, and other papers not filed in or in the possession of the court for 99 years;
- B. If an adoption agency ceases operations, the adoption agency shall do all of the following:
 1. Transfer the documents described in subsection (A) of this section to the Department or to another adoption agency in this state if the documents concern a matter that is closed;
 2. Transfer the documents described in subsection (A) of this section to another adoption agency in this state if the documents concern a matter that is open;
 3. Notify the Department of the transfer of any documents to another adoption agency in this state; and
 4. Notify all adoptive parents whose files the adoption agency is transferring to the Department or another adoption agency in this state of the transfer.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-230. Birth Parent: Service Agreement; Prohibitions

- A. Before providing services to a birth parent, an adoption agency shall enter into a signed written agreement with the birth parent. The agreement shall:
 1. Describe all services the adoption agency shall provide to the birth parent;
 2. Contain an explanation in plain language describing any monies that an adoptive parent may pay to a birth parent under A.R.S. § 8-114, including that a birth parent may only receive payments up to \$1,000 without court approval;
 3. Contain an itemized statement describing the nature, purpose, and amount of any payments the birth parent shall receive through the adoption agency or any entity affiliated with the adoption agency under A.R.S. § 8-114;
 - a. If the actual amount under subsection (3) is not known, the adoption agency shall describe how the amount shall be calculated, and
 - b. Include amounts only for reasonable and necessary expenses incurred in connection with the adoption under A.R.S. § 8-114.
- B. Before or at the time of entering into a birth parent agreement with a birth mother, the adoption agency shall advise the birth mother of her obligations under A.R.S. § 8-106(F).
- C. Before providing services to a birth parent, the adoption agency shall advise the birth parent of OLR's responsibility for licensing and monitoring an adoption agency, and the public's right to register a complaint about an adoption agency as prescribed in R21-9-235.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-231. Adoption Fees; Reasonableness

- A. An adoption agency shall not charge a client more than a reasonable fee for services.
- B. An adoption agency shall establish, maintain, and follow a written policy on the fees it charges a client for adoption services. The fee policy shall include all of the adoption agency's practices and procedures regarding fees, including the following:
 1. A schedule of fees the adoption agency charges for each specific service the adoption agency offers, and the time in the adoption process when the client is required to pay the fee, broken down, at a minimum, as follows:
 - a. Preregistration and registration fees,
 - b. Application and orientation fees,
 - c. Certification application fee,
 - d. Certification investigation,
 - e. Certification report,
 - f. Certification renewal fees,
 - g. Placement services,
 - h. Placement investigation and report,
 - i. Foreign adoption services,
 - j. Post-placement services,
 - k. Fees incurred when a child has special needs, and
 - l. Twins or sibling placements;
 2. An explanation of any practice the adoption agency may have for assessing fees based on pooled or averaged costs;
 3. An explanation of the circumstances or conditions that would cause the adoption agency to reduce, waive, suspend, or refund a fee, which circumstances may include:
 - a. Adjustment made for the well-being of an adoptive child, and
 - b. Adjustments made to accommodate an adoptive parent's limited ability to pay;
 4. An explanation of the circumstances that would cause the adoption agency to increase its fees; and
 5. The procedures the adoption agency follows to collect its fees.
- C. An adoption agency shall advise prospective and existing clients of its fee policy and shall make a copy of the policy available to clients upon request.
- D. An adoption agency shall not:
 1. Condition a client's eligibility for, or receipt of, adoption services on the client's donation or agreement to donate money, goods, services, or other things of value, other than the regular scheduled adoption fees, to the adoption agency or to an adoption agency affiliate;
 2. Obstruct or withhold finalization of a placement or adoption solely for nonpayment of fees;
 3. Charge a client for any fee, which the adoption agency has not listed in the fee schedule, included in its fee policy, and disclosed to the client in the client's fee agreement letter;
 4. Charge a prospective adoptive parent advance fees contrary to R21-5-403(D); or
 5. Charge a prospective adoptive parent for a service not rendered.
- E. OLR may audit, or designate a certified public accountant to audit, an adoption agency's fee structure.
- F. The adoption agency shall provide OLR and the adoption agency's current adult clients with a copy of any changes made to the adoption agency's fee policy, no less than 14 days prior to the effective date of the change.
- G. An adoption agency shall refund to a client any fees the client paid for services the adoption agency failed to perform. Against any such refund, the adoption agency may offset any

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amount due from the client for services the adoption agency has performed and for which the client agreed to pay but has not paid.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-232. Adoption Fee Agreement

- A. Before providing services to an adoptive parent, the adoption agency shall enter into a written fee agreement with the adoptive parent. Both the adoptive parent and an authorized representative of the adoption agency shall sign and date the agreement. The adoption agency shall retain the original agreement in the adoptive parent's file and provide a copy to the adoptive parent.
- B. The fee agreement shall include the following terms:
 1. A description of all services the adoption agency will provide to the adoptive parent and the fee for each service; the agreement shall specify how much of the fee is being allocated to cover medical expenses, including the cost of prenatal care and delivery;
 2. A general description of any adoption services the adoption agency is not providing but that are required to finalize the adoption, with an estimate of the costs of such services;
 3. The terms of payment, including payment due dates and amounts; and
 4. A statement advising the client of the client's right to receive a copy of the adoption agency's fee policy.
- C. An adoption agency shall not charge a fee, other than a certification application fee, or enter into an adoption fee agreement until after the potential client has received the orientation described in R21-5-403.
- D. When an adoption agency charges adoptive parents for birth parent counseling, the adoption agency will monitor birth parent attendance at scheduled counseling at least monthly. When a birth parent does not schedule counseling services or misses scheduled counseling services for a month, the adoption agency shall refund to the adoptive parents the portion of the fee covering the remainder of the counseling services.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-233. Monitoring: Inspections and Interviews; Compliance Audit

- A. OLR shall monitor the ongoing operations of each adoption agency.
- B. Monitoring activities may include the following:
 1. At least one announced and one unannounced onsite inspection of each adoption agency during the licensing year;
 2. Interviews of adoption agency personnel and clients;
 3. A review of the adoption agency's books, records, and sample client files; and
 4. A compliance audit of the adoption agency, as described in subsection (C).
- C. Upon receipt of a complaint against an adoption agency or in response to observed deficiencies, OLR may conduct a compliance audit of the adoption agency to assess the adoption agency's compliance with applicable adoption licensing and adoption services statutes and rules.
- D. An adoption agency shall facilitate OLR's monitoring functions or compliance audit by:

1. Making the adoption agency's books, files, records, manuals, premises, and facilities available to OLR staff for inspection;
2. Allowing OLR to interview adoption agency staff; and
3. Enabling OLR to conduct interviews with adoption agency clients.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-234. Complaints; Investigations

- A. Any person may register a complaint about an adoption agency with OLR. OLR shall ask persons making oral complaints to put the complaint in writing.
- B. Upon receipt of a complaint, or in response to deficiencies observed by Department staff, OLR shall investigate the allegations of the complaint or the deficiencies.
- C. OLR's investigation may include:
 1. Interviews with the complaining party, adoption agency staff, including volunteers and interns, and adoption agency clients;
 2. Inspections of adoption agency records, files, or other documents related to the issues raised in the complaint; and
 3. Any other activities necessary to determine the truth of the allegations.
- D. Upon completion of its investigation, OLR shall:
 1. Find that the complaint is not valid and close the investigation;
 2. Find that the complaint is valid and take appropriate disciplinary action against the adoption agency, as described in this Chapter; or
 3. Find that the complaint cannot be validated or refuted based on the available evidence.
- E. OLR shall maintain a file on all complaints against an adoption agency and shall make information on validated complaints available to the general public, upon request, and to the extent permitted by confidentiality laws.
- F. A complainant's identity is confidential unless OLR takes a licensing action based on the testimony of the complainant.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-5-235. Noncompliance Status: Corrective Action Plan

- A. OLR shall place an adoption agency in noncompliance status when an OLR representative observes or receives and validates a complaint in an area that does not endanger the health, safety, or well-being of a client.
- B. OLR shall mail the adoption agency written notice of the noncompliance status, the reason for that status, and recommendations for changes the adoption agency can make to cure the identified problem.
- C. No later than 14 days following the date of the noncompliance notice, the adoption agency shall provide OLR with a written plan showing how the adoption agency shall correct the problem that resulted in the noncompliance status, with an estimated time-frame in that the adoption agency shall implement the corrective action. OLR may extend the 14-day time-frame when the adoption agency has demonstrated a good faith effort to address and resolve the identified problem.
- D. Imposition of a corrective action plan is not appealable.
- E. Failure to comply with the requirements of a corrective action plan may result in an adverse licensing action.

Historical Note

New Section made by final exempt rulemaking at 21

CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-236. Suspension

- A. OLR may suspend an adoption agency's license for violations of the statutes or rules governing adoptions, or for any activity that may threaten the health, safety, or welfare of any adoption agency client, including the following:
1. When the Department receives a report of abuse or neglect alleged to have been committed by adoption agency staff, including a volunteer or intern against a child, and the adoption agency fails to take protective measures pending an investigative finding;
 2. Conduct that causes disruption of a placement or adoption;
 3. When an adoption agency permits an employee who has failed to comply with fingerprinting requirements or who has been denied fingerprint clearance to continue providing services to children;
 4. When an adoption agency refuses to cooperate with OLR requests for information that OLR requires for determining compliance with the statutes and rules governing provision of adoption services;
 5. When an adoption agency refuses to provide OLR with information OLR has requested during the course of a complaint investigation; or
 6. When an adoption agency fails to correct a problem that resulted in imposition of noncompliance status, within the time provided in the adoption agency's corrective action plan.
- B. OLR shall mail the adoption agency written notice of the suspension, the reason for the suspension, and an explanation of the adoption agency's right to appeal the suspension.
- C. Except as otherwise provided in subsection (D), an adoption agency may continue to place adoptable children who become available for placement and to finalize adoptions of placed children and adoptees during a period of suspension, but the adoption agency shall not recruit, accept, or register any new birth or adoptive parent.
- D. When the Department finds that the physical or emotional health or safety of a client is in imminent danger, the Department may take immediate action to eliminate the danger. For the purpose of this subsection,
1. A situation involving imminent danger are those situations identified in A.R.S. § 8-821(B) that would justify removal of a child;
 2. Immediate action may include:
 - a. Removal of a child,
 - b. Transfer of a client to another adoption agency, or
 - c. Other protective action designed to eliminate the danger or risk of harm.
- E. If the adoption agency does not correct the situation that led to suspension of its license, OLR shall initiate license revocation proceedings against the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-237. Revocation

- A. OLR may revoke a license for any of the following reasons:
1. When the adoption agency refuses or fails to comply with licensing requirements, Arizona or federal laws, local codes or ordinances, or violates a statute or rule governing provision of adoption services;
 2. When the adoption agency commits any activity that may threaten the health, safety, or welfare of any adoption agency client, including, but not limited to the circum-

stances justifying license suspension, as prescribed in R21-9-236;

3. When the adoption agency commits fraud or intentional misrepresentation in obtaining or renewing its license;
 4. When the adoption agency commits fraud or intentional misrepresentation in dealing with its clients;
 5. When the adoption agency has obtained a birth parent's relinquishment and consent to adoption through duress, coercion, extortion, or intimidation;
 6. When the adoption agency knowingly fails to advise an adoptive parent that the adoptive child has been abused while in the adoption agency's care or control; or
 7. When the adoption agency violates its agreement with a client for provision of services.
- B. OLR shall mail the adoption agency written notice of the revocation, the reason for the revocation, and an explanation of the adoption agency's right to appeal the revocation.
- C. A revocation is effective:
1. Twenty-one days after receipt of the notice or letter advising the person of the revocation; or
 2. In cases where the adoption agency appeals the revocation the revocation is effective under R21-1-307.
- D. An adoption agency that has had its license revoked shall not perform adoption services after the effective date of the revocation and shall surrender its license to OLR.
- E. An adoption agency that has had its license revoked shall cooperate with OLR to transfer all its clients to another adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-238. Adverse Action: Procedures

- A. When OLR takes adverse action against adoption agency applicant or adoption agency, OLR shall give the affected party written notice of such adverse action by first-class or registered mail.
- B. For the purpose of this Section, the following are adverse actions:
1. Denial of an initial or renewal license, and
 2. Suspension or revocation of a license.
- C. The adverse action notice shall specify:
1. The action taken,
 2. All reasons supporting such action,
 3. The procedures by which the adoption agency may contest the action taken, and
 4. Where the adoption agency may file an appeal.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-239. Appeals

- A. An adoption agency applicant or adoption agency may appeal an adverse action other than imposition of a corrective action plan due to noncompliance status, by filing a written notice of appeal with OLR no later than 20 days after receipt of the notice or letter advising the adoption agency of the adverse action.
- B. OLR shall conduct an appeal from an adverse action as prescribed in A.A.C. Title 21, Chapter 1, Article 3.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

R21-9-240. International Adoptions

- A.** An adoption agency shall not accept a foreign child for adoptive placement in the United States unless the government of the foreign child's country of origin authorized the placement.
- B.** The adoption agency shall provide OLR with evidence of its authority from or agreements with a foreign country or placing organization (such as Hague Accreditation). If the evidence of authority is not written in English, the adoption agency shall
- provide an English language translation of the documentation by an independent translation service.
- C.** The adoption agency shall advise the adoptive parents of the need to have the child naturalized in the United States.
- D.** The adoption agency shall provide adoptive parents with information about the child's culture of origin.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. 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.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. 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 title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, 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 and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department 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 monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

General Statutory Authority

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-120. Records; inspection; exception; destruction or transfer of certain records

A. Except as provided in section 8-129, all files, records, reports and other papers compiled under this article, whether filed in or in possession of the court, an agency or any person or association, shall be withheld from public inspection.

B. Such files, records, reports and other papers may be open to inspection by persons and agencies having a legitimate interest in the case and their attorneys and by other persons and agencies having a legitimate interest in the protection, welfare or treatment of the child if so ordered by the court.

C. This section does not prohibit persons employed by the court, the division or an agency from conducting the investigations or performing other duties pursuant to this article within the normal course of their employment.

D. This section does not prohibit persons employed by the court, the division, an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 or an agency from providing partial or complete identifying information between a birth parent and adoptive parent when the parties mutually agree to share specific identifying information and make a written request to the court, the division or the agency.

E. Except for files that belong to an attorney, all files, records, reports and other papers not filed in or in the possession of the court shall not be destroyed until after a ninety-nine year period. The files that belong to an attorney shall not be destroyed until after a seven-year period.

F. If an adoption agency ceases operations, the adoption agency shall do all of the following:

1. Transfer the documents described in subsection A of this section to the division or to another adoption agency in this state if the documents concern a matter that is closed.
2. Transfer the documents described in subsection A of this section to another adoption agency in this state if the documents concern a matter that is open.
3. Notify the division of the transfer of any documents to another adoption agency in this state pursuant to this subsection.
4. Notify all adoptive parents whose files it is transferring pursuant to this subsection of the transfer.

8-121. Confidentiality of information; exceptions

A. It is unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to subsection C of

this section or section 8-120, 8-129 or 8-134, or except for purposes permitted by order of the court, for any person to disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of, any information involved in any proceeding under this article directly or indirectly derived from the files, records, reports or other papers compiled pursuant to this article, or acquired in the course of the performance of official duties until one hundred years after the date of the order issued pursuant to section 8-116. After one hundred years has elapsed from the date of the order issued pursuant to section 8-116 the court shall transfer all files, records, reports and other documents in possession of the court relating to the adoption to the Arizona state library, archives and public records. The items transferred pursuant to this subsection shall be available for public inspection during business hours and may be made available in an alternative format.

B. The provisions of this section shall not be construed to prohibit persons employed by the court, the division or an agency from conducting the investigations or performing other duties pursuant to this article within the normal course of their employment.

C. This section does not prohibit persons employed by the court, the division, an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 or an agency from providing partial or complete identifying information between a birth parent and adoptive parent when the parties mutually agree to share specific identifying information and make a written request to the court, the division or the agency.

D. A person may petition the court to obtain information relating to an adoption in the possession of the court, the division or any agency or attorney involved in the adoption. Nonidentifying information may be released by the court pursuant to section 8-129. The court shall not release identifying information unless the person requesting the information has established a compelling need for disclosure of the information or consent has been obtained pursuant to subsection E of this section or from the birth parent pursuant to section 8-106. If a compelling need for disclosure of information is established, the court may decide what information, if any, should be disclosed and to whom and under what conditions disclosure may be made.

E. An adoptee who is eighteen years of age or older or a birth parent may file at any time with the court and the agency, division or attorney who participated in the adoption a notarized statement granting consent, withholding consent or withdrawing a consent previously given for the release of confidential information. If an adoptee who is eighteen years of age or older and the birth mother or birth father have filed a notarized statement granting consent to the release of confidential information, the court may disclose information, except identifying information relating to a birth parent who did not grant written consent, to the adoptee or birth parent.

F. This section does not prohibit a person from notifying a birth parent of the death of a child that the birth parent has placed for adoption.

8-126. Licensure and regulation of agencies

The division shall:

1. License agencies on an annual basis subject to renewal. Before issuing a license, the division shall investigate the activities of the agency, its financial stability, the character and training of its personnel and the adequacy of the agency's intended services to ensure the welfare of parents and children using the services of the agency. If the agency meets the standards established by the division, a license shall be issued.

2. Provide for oversight of agencies.

3. Assist the staffs of all agencies by giving advice on methods and procedures.

4. Establish rules for:

(a) Licensing agencies, including professional licensing, and suspending, revoking and denying licenses.

(b) Annual renewal of agency licenses.

(c) The form and content of investigations, reports and studies concerning adoption placements.

(d) Reasonable fees chargeable by the division to agencies for licensure and renewal of licenses.

(e) Reasonable and authorized fees chargeable to any person for services in connection with an adoption and payments, disbursements or commitments of anything of value made or agreed to be made to or for the benefit of a birth parent by any person in connection with an adoption.

(f) Conducting reviews and making reports pursuant to section 8-114, subsection E.

8-127. Services of county attorney; exception

A. The county attorney of the county in which the prospective adoptive parent resides or, if applicable, the county where the child is a ward of the court, on application of the person or persons seeking adoption, shall prepare the adoption petition and act as attorney without expense to the prospective adoptive parent. The county attorney may also prepare a petition to terminate the parent-child relationship pursuant to chapter 4, article 5 of this title and act as attorney without expense to the prospective adoptive parent. If an adoption is made through an adoption agency licensed pursuant to this title, the agency shall prepare the petition for adoption and shall submit it to the county attorney. If either petition is contested the county attorney, with the consent of

the court, may withdraw from further representation of any party to the proceeding and the prospective adoptive parent shall employ counsel.

B. Notwithstanding subsection A of this section, the county attorney:

1. Shall not prepare a petition or act as the attorney for a prospective adoptive parent seeking adoption pursuant to title 14, chapter 8.
2. Is not required to act as an attorney for the prospective adoptive parent concerning the enforcement or modification of an agreement entered into pursuant to section 8-116.01.

8-129. Health and genetic history; compilation; availability; costs

A. Before placing a child for adoption, the division or the agency or the person placing the child, if the child is not placed by the division, shall compile and provide to the prospective adoptive parents detailed written nonidentifying information including a health and genetic history and all nonidentifying information about the birth parents or members of a birth parent's family set forth in a document that is separate from any document containing identifying information. This subsection does not apply if the birth parents are deceased, their whereabouts are unknown or the information is not otherwise reasonably available.

B. Records containing the information prescribed in subsection A:

1. Shall be retained by the division, agency or person for ninety-nine years, and if an agency or person ceases to function, the agency or person shall transfer these records to the division, except that an agency ceasing operations may transfer these records to another agency within this state, provided the agency transferring the records gives notice of the transfer to the division.
2. May be supplemented with information supplied by any member of the birth family, any member of the adoptive family or an adult adoptee or the family of an adult adoptee. Supplemental information supplied to the division or the agency or the person who placed the child shall be filed with all other information concerning the adoption.
3. Shall be available on request throughout the ninety-nine year period, together with any other information described in subsection A which is added, to the following persons only:
 - (a) The adoptive parents of the child or, if the adoptive parents have died, the child's guardian.
 - (b) The adoptee if he is eighteen or more years of age.

(c) If the adoptee has died, the adoptee's spouse if he is the legal parent of the adoptee's child or the guardian of any child of the adoptee.

(d) If the adoptee has died, any progeny of the adoptee who is eighteen or more years of age.

(e) The birth parent of the adoptee or other biological children of the birth parent.

C. The actual and reasonable cost of providing information pursuant to this section shall be paid by the person requesting the information.

8-130. Consent to licensed agency or division; attorneys; affidavits

A. A consent to adoption of a child shall not be granted to an agency unless the agency is licensed to place children for adoption under this article. A consent may be granted to the division, which is exempt from licensure. An agency or the division may conduct both agency placement adoptions and direct placement adoptions. An agency placement adoption shall only be made by an agency or the division.

B. Except as provided in subsection C, a person shall not do any of the following unless the person is employed or engaged by and acting on behalf of a licensed adoption agency:

1. Solicit or accept employment or engagement, for compensation, by or on behalf of a parent or guardian for assistance in the placement of a child for adoption.

2. Solicit or accept employment or engagement, for compensation, by or on behalf of any person to locate or obtain a child for adoption.

C. An attorney licensed to practice law in this state may assist and participate in direct placement adoptions and may receive compensation to the extent the court finds reasonable under section 8-114 if the person granting consent to the adoption has made a choice of the specific adopting parent without prior involvement of the attorney or if the choice is made only from among persons currently certified by the court as acceptable to adopt children pursuant to section 8-105.

D. Before a petition to adopt is granted and as a condition of the entry of an order of adoption:

1. An attorney participating or assisting in a direct placement adoption shall file with the court an affidavit confirming that there has been, to the best of his knowledge and belief, compliance with subsection B of this section and with section 8-114, subsection B, section 8-129 and, if fictitious names have been used, section 8-107, subsection E.

2. An attorney representing petitioners in an agency placement adoption and the agency shall file with the court an affidavit confirming that there has been, to the best

of the petitioner's, agency's and attorney's knowledge and belief, compliance with subsections A and B of this section and sections 8-114 and 8-129.

8-132. Adoption agency information confidentiality; permissible disclosure; use; violation; classification; definitions

A. Unless otherwise provided by law and except as provided in subsection C or D of this section, all personal information concerning an individual who applies for or who receives an adoption agency license is confidential and may not be released, unless the release is ordered by the superior court or provided for by court rule. DCS information is confidential and may be released only as prescribed in section 8-807.

B. Adoption agency information is not confidential, except for both of the following:

1. Any DCS information in the licensing files.
2. The address of any facility where a foster child is placed, even if the address is also the corporate address of the adoption agency.

C. An employee of the department of child safety, the department of law or a court may obtain the information described in subsection A or B of this section in the performance of the employee's duties.

D. An employee of the department of child safety, the department of law or a court may release information that is otherwise confidential under this section under any of the following circumstances:

1. To an applicant or licensee if a request is made in writing specifically requesting information that directly relates to the person who requests the information.
2. In oral or written communications involving the provision of services or the referral to services between employees of, persons under contract with or persons holding a general employment relationship with the department of child safety, the department of law or the juvenile court.
3. If the disclosure is necessary to protect against a clear and substantial risk of imminent serious injury to a client of the department of child safety.
4. To an agency of the federal government, this state or another state or any political subdivision of this state for official purposes. Information received by a governmental agency pursuant to this paragraph shall be maintained as confidential, unless the information is pertinent to a criminal prosecution.
5. To a foster parent or a parent certified to adopt, if the information is necessary to assist in the placement with or care of a child by the foster parent or person certified to adopt.

6. To an officer of the superior court, the department or an agency that is required to perform an investigation pursuant to section 8-105, if the information is pertinent to the investigation. Information received pursuant to this paragraph may be disclosed to the court, but shall otherwise be maintained as confidential.

E. A person who violates this section is guilty of a class 2 misdemeanor.

F. For the purposes of this section:

1. "Adoption agency information" means all information in the licensing file of the department, including all information on corporate or other entity applicants or licensees and any licensing investigations. Adoption agency information does not include personal information about individuals who apply for licensure to or who are licensed by the department as an adoption agency or other similar personal information contained in the licensing file of the department.

2. "DCS information" has the same meaning prescribed in section 8-807.

3. "Personal information" means information about an individual that is disclosed by the individual or by a third party on behalf of the individual to obtain or maintain a license. Personal information includes all of the following:

(a) The individual's identity, social security number, address and personal history.

(b) Financial, health or medical information about the individual.

(c) References for the individual.

8-134. Confidential intermediary

A. Any of the following persons may use the services of a confidential intermediary who is listed with the court:

1. The adoptive parents of an adoptee who is at least eighteen years of age or, if the adoptive parents are deceased, the adoptee's guardian.

2. An adoptee if the adoptee is at least eighteen years of age.

3. If an adoptee is deceased, the adoptee's spouse if the spouse is the legal parent or guardian of any child of the adoptee.

4. If an adoptee is deceased, any progeny of the adoptee who is at least eighteen years of age.

5. Either of the birth parents of an adoptee.

6. The biological grandparent of the adoptee or other members of the adoptee's extended biological family.

7. A biological sibling of the adoptee if the sibling is at least eighteen years of age.

B. An adoption agency licensed by this state, the division or an individual who meets the requirements adopted pursuant to subsections I and J of this section may serve as a confidential intermediary.

C. Notwithstanding sections 8-120 and 8-121, a confidential intermediary may inspect documents compiled pursuant to this article. Documents include the court records, division records, agency records and maternity home records. The confidential intermediary shall keep confidential all information obtained during the course of the investigation. The intermediary shall use confidential information only to arrange a contact or share information between the person who initiates the search and the person who is the subject of the search. A confidential intermediary shall review the court record before making any contact with an adoptee to determine if an affidavit has been filed pursuant to subsection E of this section. Except as provided pursuant to subsection A, paragraphs 1, 2, 4 and 7 and subsection G of this section, a confidential intermediary shall not contact persons under twenty-one years of age.

D. The confidential intermediary shall obtain written consent from the person who initiated the search and the person who is the subject of the search before arranging for the sharing of identifying information or a contact between them. If the confidential intermediary discovers the subject of the search is deceased or that the identity of the birth father was unknown to or not revealed by the birth mother, the confidential intermediary shall share this information with the person initiating the search. If the confidential intermediary, after a diligent effort, is unable to locate the subject of the search to obtain written consent to share information, the confidential intermediary shall share this information with the person initiating the search and prepare and place with the compiled documents a written report describing search efforts. If the person who initiated the search petitions the court to release identifying information, the court shall review the report prepared by the confidential intermediary and shall decide if the information may be released and in what manner the information may be released if the court determines there is good cause.

E. An adoptive parent who has not informed an adoptee that the adoptee was adopted may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the adoptive parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the adoptee unless the adoptive parent withdraws the affidavit and grants permission in writing or the adoptee has filed an affidavit stating that the adoptee knows about the adoption and wishes to make contact with the birth parent.

F. A birth parent who has not informed the parent's biological offspring of the existence of the adoptee may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the birth parent.

If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the biological sibling unless the birth parent withdraws the affidavit and grants permission in writing or the biological sibling has filed an affidavit stating that the biological sibling knows about the adoptee and wishes to make contact with the adoptee.

G. On receipt of a written statement from a physician or a registered nurse practitioner that explains in detail how a health condition may seriously affect the health of the adoptee or a direct descendant of the adoptee, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify an adoptee who has attained eighteen years of age, an adoptive parent or guardian of an adoptee who has not attained eighteen years of age or a direct descendant of a deceased adoptee that the nonidentifying information is available and shall be provided on written request.

H. On receipt of a written statement from a physician or a registered nurse practitioner that explains in detail why a serious health condition of the adoptee or a direct descendant of the adoptee should be communicated to the birth parent or biological sibling to enable the birth parent or biological sibling to make an informed medical decision, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify those individuals that the nonidentifying information is available and shall be provided on written request.

I. The Arizona supreme court shall administer the confidential intermediary program. The court shall adopt rules and procedures necessary to implement the program, including qualifications, required fees, minimum standards for certification, training and standards of conduct of confidential intermediaries, and shall establish the fees that may be charged by a confidential intermediary.

J. A person shall not act as a confidential intermediary unless the person possesses a confidential intermediary certificate issued by the supreme court. In order to be certified as a confidential intermediary a person shall meet and maintain the minimum standards prescribed by this section and the rules adopted by the supreme court.

K. In carrying out the provisions of this section the supreme court shall require applicants for a confidential intermediary certificate to furnish fingerprints and the supreme court shall obtain criminal history record information pursuant to section 41-1750. The applicant for certification shall pay a fee to the department of public safety to reimburse the department of public safety for the cost of obtaining the applicant's criminal history record information required by this section. The fee shall not exceed the actual cost of obtaining the applicant's criminal history record information.

L. The actual and reasonable cost to the agency, division or court of providing information pursuant to the confidential intermediary program shall be paid by the person requesting the services of a confidential intermediary. If the juvenile court of a county is supplying the information, the actual and reasonable costs shall be paid to the clerk of the court of that county who shall transmit the monies to the county treasurer of that county for deposit in the juvenile probation services fund to be utilized by the juvenile court of that county for reimbursing the court for costs associated with providing information pursuant to the confidential intermediary program. If the division is supplying the information, the actual and reasonable costs shall be paid to the division. If an agency is supplying the information, the actual and reasonable costs shall be paid to the agency.

46-141. Criminal record information checks; fingerprinting employees and applicants; definition

A. Each license granted by the department of economic security and each contract entered into between the department of economic security and any contract provider for the provision of services to juveniles or vulnerable adults shall provide that, as a condition of employment, personnel who are employed by the licensee or contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment.

B. Each person, whether paid or not, shall have as a condition of employment a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days after being employed, if the person is any of the following:

1. Licensed by the department of child safety or employed by the licensee.
2. A department of child safety contractor for the provision of services directly to juveniles or vulnerable adults.
3. An adult working in a group home, residential treatment center, shelter or other congregate care setting.

C. The licensee or contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The department of economic security or the department of child safety may allow all or part of the costs of fingerprint checks to be included as an allowable cost in a contract.

D. A service contract or license with any contract provider or licensee that involves the employment of persons who have contact with juveniles or vulnerable adults shall

provide that the contract or license may be canceled or terminated immediately if a person certifies pursuant to subsections G and H of this section that the person is awaiting trial on or has been convicted of any of the offenses listed in subsections G and H of this section in this state or similar offenses in another state or jurisdiction or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

E. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection D of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections G and H of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection B is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring or allowing contact with juveniles or vulnerable adults and is not allowed to work in a group home, residential treatment center, shelter or other congregate care setting.

F. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection D of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections G and H of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection C is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring contact with juveniles or vulnerable adults and is not allowed to work in a group home, residential treatment center, shelter or other congregate care setting unless the person is granted a good cause exception pursuant to section 41-619.55.

G. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults or who are allowed to work in a group home, residential treatment center, shelter or other congregate care setting shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they are awaiting trial on or have ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

H. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles or who are allowed to work in a group home, residential treatment center, shelter or other congregate care setting shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they have ever

committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.

I. Federally recognized Indian tribes or military bases may submit and the department of economic security and the department of child safety shall accept certifications that state that personnel who are employed or who will be employed during the contract term have not been convicted of, have not admitted committing or are not awaiting trial on any offense under subsection G of this section.

J. A person who applies to the department of economic security or the department of child safety for a license or certificate or for paid or unpaid employment, including contract services, and who will provide direct services to juveniles or vulnerable adults or who will work in a group home, residential treatment center, shelter or other congregate care setting shall submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. This subsection does not apply to those persons who are subject to section 8-105, 8-509, 8-802 or 41-1968 or subsection A of this section.

K. The special services unit of the department of economic security and employees of the department of child safety may use the department of public safety automated system to update all criminal history record information in order to ensure, to the maximum extent reasonably possible, complete disposition information. The department of economic security or the department of child safety may deny employment or issuance or renewal of the contract or license applied for in these cases if it determines that the criminal history record information indicates that the employee, applicant or contractor is not qualified or suitable.

L. Volunteers who provide services to juveniles or vulnerable adults under the direct visual supervision of the contractor's or licensee's employees are exempt from the fingerprinting requirements of this section, unless the volunteer works in a group home, residential treatment center, shelter or other congregate care setting.

M. The department of economic security or the department of child safety shall notify the department of public safety if the department of economic security or the department of child safety receives credible evidence that a person who possesses a valid fingerprint clearance card pursuant to subsection A of this section either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B or C.
2. Falsified information on the form required by subsection G of this section.

ARIZONA REVISED STATUTE

N. For the purposes of this section, "vulnerable adult" has the same meaning prescribed in section 46-451.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 18, Article 1, Per Capita Matching Funds



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 7, 2020

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F21-0104)
Title 9, Chapter 18, Article 1, Per-Capita Matching Funds

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 18, Article 1, regarding Per-Capita Matching Funds. According to the Department, these rules were adopted pursuant to A.R.S. § 36-189(A), which states that:

The department of health services may use monies at its disposal and not otherwise appropriated to match monies provided by cities and counties to establish and maintain local health department services for any city or county, on such reasonable terms as it establishes by rule. From the appropriation made for purposes of this section, the department of health services shall reimburse local health departments, which meet minimum standards of personnel and performance established by the director of the department of health services and, on submission and approval of a plan and budget by such local health departments, fifty percent of the portion of the total approved budget not in excess of one dollar twenty-five cents per capita or a prorated portion thereof if sufficient monies are not available to meet the approved requests. If annual expenditures of the local health department are less than the amount budgeted, the total state reimbursement to such department for the year shall not exceed the appropriate

percentage of the amount actually expended by such local health department. The department of health services, in addition, may provide federal monies or services for demonstrations, studies and special projects, or for emergencies.

However, the Department states that these rules have not been utilized since 2010 because no funds were allocated to the Department for this purpose. The Department states that it retains the rules because they are required by statute and there is the potential for funding allocations in the future. Further, the Department notes that if COVID-19 funds were made available to the Department for cities and county local health departments, the Department could use these rules to allocate the funds.

In the previous 5YRR for these rules, which the Council approved in January 2016, the Department did not propose a course of action for these rules.

Proposed Action

For the reasons stated in the 5YRR, the Department does not propose to take any action on these rules.

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:

The Department submitted an Economic, Small Business, and Consumer Impact Statement (EIS) with the final rulemaking effective November 11, 2006. The 2006 EIS identified cost bearers and beneficiaries as the Department, local health departments, and the general public. The 2006 EIS designated costs or revenues as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The 2006 EIS stated that the Department could incur a moderate cost to review, write, and complete the rulemaking process. Additionally, for new rules that clarify requirements and simplify the grant application, the Department expected to receive a benefit from spending less time completing administrative functions related to processing grant applications and the disbursement of funds. The Department's cost for completing administrative functions for one grant application was estimated at \$2,200. If the Department had awarded grants to 13 counties, the Department would have incurred an estimated cost of \$28,600. Under the new rules, the Department's expected minimal-to-moderate benefit would be \$14,300, or half of the costs that the Department would have incurred under the old rules as stated in the 2006 EIS. The Department agrees with the 2006 EIS that the Department incurred minimal cost for promulgating new rules

as is the case for all rulemakings. However, the Department does not consider whether the rules continue to provide the expected minimal-to-moderate benefit for clarifying requirements and simplifying the grant application, since the Legislature has not appropriated funding for Per Capita Matching Funds since 2010. Likewise, the rules have not been enforced since 2010.

The 2006 EIS expected local health departments to experience a minimal-to-moderate benefit by having new rules that simplify the application process and reduce the amount of information collected, resulting in local health department employees spending less time completing and filing a grant application. Local health departments were also expected to incur minimal costs associated with processing a request for a waiver for a registered nurse who does not have a baccalaureate degree or five years of experience providing public health nursing services specified in new R9-18-104(B)(2). The Department indicated in its 2010 and 2015 5YRRs that it did not receive a request for a waiver. In addition, local health departments were expected to incur minimal costs to retain records for five years rather than three years. Because the rules are not enforced, the Department anticipates that the counties have not incurred costs or benefits as reported in the 2006 EIS.

Lastly, the 2006 EIS expected the public to experience a minimal-to-moderate benefit from having more local health department services and a minimal benefit from having some improved services due to registered nurses who do not meet requirements in R9-18-104 receiving additional training. The Department anticipates that the public has not received expected benefits since the rules are not enforced.

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 Article 1 rules establish requirements that allow local health departments to apply for and receive matching funds for maintaining local health department services specified in the rules. No funds have been appropriated to the Department and the rules have not been utilized since 2010. The Department retains the rules as they are required by statute and because of the potential for future funding allocations. It is possible that if COVID-19 funds were made available to the Department for cities and county local health departments, the Department could utilize these rules to allocate funds. If the Department were to allocate funds, the Department expects that having a method in place would provide a significant benefit to local health departments that would outweigh the probable cost. The Department also anticipates that the rules impose the least burden and cost to regulated persons since the Department did not identify any substantive issues in this 5YRR. The non-substantive issues identified do not increase a burden or cost and do not make the rules ineffective.

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 identifies certain rules whose clarity, conciseness, and understandability could be improved by making technical changes as the Department specifies for each rule in Item 6 of the 5YRR.

Those rules are:

- **R9-18-101** (Definitions) (certain definitions should be deleted);
- **R9-18-103** (Review of Application and Awarding of Grant) (use different terminology);
- **R9-18-105** (Record Retention and Review) (change reference to a retention schedule); and
- **R9-18-106** (Notice to Department) (clarify application of 30-day time period).

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

Yes. In Item 4 of the 5YRR, the Department identifies one rule, R9-18-101 (Definitions), that contains a definition ("Local Health Department) that could be amended to make it more consistent with applicable statutes.

Currently, the term "Local Health Department" is defined in R9-18-101(15) to "mean the same as in A.R.S. § 36-671." The Department states that "[t]he definition in R9-18-101(15) would be more consistent with statutes if the definition referenced Title 36, Chapter 1, Article 4 Local Health Departments rather than A.R.S. § 36-671 since A.R.S. § 36-671 refers [the] reader to Title 36, Chapter 1, Article 4."

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives, but could be improved if the issues identified in Items 4 and 6 (see above) of the 5YRR are addressed.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are not enforced as written. The Department explains that "beginning in Fiscal Year (FY) 2010, the Legislature stopped appropriating funds for the 9 A.A.C. 18, Article 1, Per Capita Matching Funds program. For this reason, the rules in Article 1 are not utilized. When funding is allocated to the

Department for Per Capita Matching Funds, the Department will resume utilization of the rules.”

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

Not applicable. No federal laws apply to the rules under review.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

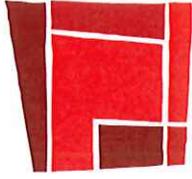
Not applicable. The rules under review were last amended in 2006 and were initially adopted before July 29, 2010. The rules under review do not establish a license, certification, or permit.

11. Conclusion

Council staff finds that the Department submitted an adequate report that meets the requirements of A.R.S. § 41-1056. Council staff further notes that the Department provides a detailed justification for its decision to not propose a course of action despite the issues relating to clarity, conciseness, understandability, and consistency identified in this report.

While Council staff recommends approval of this report, Council staff notes that if funding were to be appropriated in the future, the rules would be enforced. If no action is taken regarding these rules, and if they needed to be enforced, they would be despite the issues with certain rules' clarity, conciseness, understandability, and consistency that the Department identifies in this 5YRR. However, the Department does not indicate in this report that these issues would impede effective enforcement of the rules if it became necessary.

Therefore, Council staff recommends that the Council discuss with the Department whether to amend the rules in order to be prepared if they are needed in the near future.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 20, 2020

VIA EMAIL: ggrc@azdoa.gov

Nicole Sornsin, Chair
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 18, Article 1 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 18, Article 1 which is due on October 31, 2020.

The Department of Health Services reviewed the following rules with the intention that those rules do not expire under A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1056(A).

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "RL", written over the name "Robert Lane".

Robert Lane
Director's Designate

RL:tk

Enclosures

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



**Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services**

Chapter 18. Department of Health Services – Local Health Department Services

Article 1. Per Capita Matching Funds

October 2020

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-132(A)(2) and 36-189(A)

2. The objective of each rule:

Rule	Objective
R9-18-101	The objective of the rule is to define terms used in 9 A.A.C. 18, Article 1 so that a reader can understand requirements in the Article.
R9-18-102	The objective of the rule is to establish the information and documentation required in a grant application requesting per capita matching funds and establishes submission deadline.
R9-18-103	The objective of the rule is to establish the application review and approval process, including notifications to applicants whether approved or denied and to establish notification requirement for authorization of payment of allocated per capita matching funds.
R9-18-104	The objective of the rule is to specify personnel who are required for the delivery of clinical services by a local health department and establish the credentials required for a physician, registered nurse, and sanitarian.
R9-18-105	The objective of the rule is to establish requirements for maintaining all records applicable to the approval and per capita matching funds, allowing the Department access to all records, and refunding per capita matching funds not expended for purposes set forth in the application.
R9-18-106	The objective of the rule is to require local health departments to notify the Department when there is change in personnel specified in R9-18-104 or a modification to a narrative plan specified in R9-18-102 for which per capita matching funds were allocated.

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 effective or mostly effective; however, the rules could be clearer and concise if matters identified in sections 4 and 6 were amended in an expedited rulemaking pursuant to A.R.S. § 41-1027.
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4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-18-101	The definition in R9-18-101(15) would be more consistent with statutes if the definition referenced Title 36, Chapter 1, Article 4 Local Health Departments rather than A.R.S. § 36-671 since A.R.S. § 36-671 refers reader to Title 36, Chapter 1, Article 4.

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
Article 1	Beginning FY 2010, the Legislature stopped appropriating funds for the 9 A.A.C. 18, Article 1, Per Capita Matching Funds program. For this reason, the rules in Article 1 are not utilized. When funding is allocated to the Department for Per Capita Matching Funds, the Department will resume utilization of the rules.

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
R9-18-101	The rule would be more concise if definitions in R9-18-101(9) “electronic,” (14) “immunization,” (23) “public health emergency,” and (27) “service population” were deleted. Definition (9), (14), (23), and (27) are not used in Article 1.
R9-18-103	The requirement in subsection (A)(3)(b) specifies “calendar days” and in subsection (B) uses “30 days.” The terms “calendar days” and “days” are not defined. The rule would be clearer if “calendar days” were used instead of “days” and if “calendar days” were defined to have the same meaning as in other Department rules. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

R9-18-105	The requirement in R9-18-105(B) would be more concise and clearer if the records retention requirement referenced the Arizona State Library, Archives and Records Management (ASLPR), Records Retention Schedule: GS-1018 Rev. 3. GS-1018 Rev. 3 provides record series numbers 10279, 10280, and 10281 for maintaining grant records, including durations. All state and local agencies are required to retain records according to ASLPR approved records retention schedules. However, if the records retention requirements are identified in the Grant issued by the Department, the requirements in R9-18-105 could be removed. For example, the Department in its delegation agreements with the counties states, “The County agrees to retain all records and data according to the Arizona State Library, Archives and Public Records, General Records Retention Schedule for All State and Local Agencies for Environmental Quality, Health, Management and Sustainability Records. See http://apps.azlibrary.gov/records/general.aspx for more information.
R9-18-106	The requirement in R9-18-106 would be clearer if amended to clarify that the 30-day time period applies only to changes in personnel and not to modification of a local health department’s plan for allocating the monies.

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 Department submitted an economic, small business, and consumer impact statement (EIS) with the final rulemaking effective November 11, 2006. The 2006 EIS identified cost bearers and beneficiaries as the Department, local health departments, and society in general. The 2006 EIS designated costs or revenues as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The 2006 EIS identified that the Department could incur a moderate cost to review, write, and complete the rulemaking process. Additionally, for new rules that clarify requirements and simplifies the grant application, the Department expected to receive a benefit for spending less time completing administrative functions related to processing grant applications and the disbursement of funds. The Department’s cost for completing administrative functions for one grant application was estimated at \$2,200. If the Department had awarded the 13 counties grants, the Department would have incurred an estimated cost of \$28,600. Under the new rules, the Department’s expected minimal-to-moderate benefit would be \$14,300, half of the costs that the Department would have incurred under the old rules as stated in the 2006 EIS. The Department agrees with the 2006 EIS that the Department incurred minimal cost for promulgating new rule as is consistent for all rulemakings. However, the Department does not consider whether the rules continue to provide the expected minimal-to-moderate benefit for

clarifying requirements and simplifying the grant application, since the Legislature has not appropriated funding for Per Capita Matching Funds since 2010. Likewise, the rules have not been enforced since 2010.

The 2006 EIS expected local health departments to experience a minimal-to-moderate benefit for having new rules that simplifies the application process and reduces the amount of information collected allowing local health departments to reduce employees' hours spent to complete and file a grant application. Local health departments were also expected to incur minimal costs associated with processing a request for a waiver for a registered nurse who does not have a baccalaureate degree or five years of experience providing public health nursing services specified in new R9-18-104(B)(2). The Department in its 2010 and 2015 five-year-review reports indicates that no request for a waiver has been received. In addition, local health departments were expected to incur minimal costs to retain records for five years rather than three years. Because the rules are not enforced, the Department anticipates that the counties have not incurred costs or benefits as reported in the 2006 EIS.

Lastly, the 2006 EIS expected the public to experience a minimal-to-moderate benefit from local health department services made more abundant and a minimal benefit from having some improved services as a result of additional training of registered nurses who do not meet requirements in R9-18-104. The Department anticipates that the public has not received expected benefits since the rules are not enforced.

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 stated in the 2015 5YRR course of action that the Department did not plan to amend 9 A.A.C. 18, Article 1 until further substantive issues are identified. The Department did not amend 9 A.A.C. 18, Article 1 as stated.

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

The Article 1 rules establish requirements that allow local health departments to apply for and receive matching funds for maintaining local health department services specified in rule. No funds have been appropriated to the Department and the rules have not been utilized since 2010. The Department retains the rules as they are required by statute and because of the potential for future funding allocations. It is possible that if COVID-19 funds were made available to the Department for cities and county local health departments, the Department could utilize these rules to allocate funds. If the Department were to allocate funds, the Department expects that having a method in place would provide a significant benefit to local health departments that would outweigh the probable cost. The Department also anticipates that the rules impose the least burden and cost to regulated persons since the

Department in this five-year-review report did not identify any substantive changes and the non-substantive changes identified do not increase burden or cost and do not make the rules ineffectual.

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 federal laws apply to these rules.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were last amended by final rulemaking at 12 A.A.R. 3715 and effective November 11, 2006.

The rules were adopted before July 29, 2010 and the rules do not establish a license, certification, or permit.

14. **Proposed course of action**

Pursuant to A.R.S. § 36-189¹, the Department adopted rules for Per Capita Matching Funds at 9 A.A.C. 18, Article 1 in 1988 and amended the rules in November 2006. As reported in the 2015 Five-Year-Review Report, the Department in this 2020 Five-Year-Review Report (Report) finds that no funds have been allocated by the Legislature to the Department for distribution to local health departments since 2009. In addition, the Department has not received any indication from the Legislature that it intends to allocate such funds in the future.

Accordingly, the grant application, minimum standards of personnel, and records/notice requirements in Article 1 are not currently utilized. With this Report, the Department identifies no substantive issues or health and safety concerns with the rules and determines there is no immediate need to amend the rules. As required by A.R.S. § 41-1021.02(A), the Department posted the Regulatory Agenda² it expects to follow during 2021 that includes 18 rulemakings, of which 11 are regular, three are exempt, and four expedited. The Department's 2021 Regulatory Agenda also includes 14 five-year-review reports. Based on the foregoing, its resources and other priorities, the Department does not expect to take action with regard to 9 A.A.C. 18.

¹ A.R.S. § 36-189(A) "The department of health services may use monies at its disposal and not otherwise appropriated to match monies provided by cities and counties to establish and maintain local that Department services for any city or county, on such reasonable terms as it establishes by rule."

² <https://www.azdhs.gov/director/administrative-counsel-rules/rules/index.php#regulatory-agenda>

ATTACHMENT A – CURRENT RULES

TITLE 9. HEALTH SERVICES

CHAPTER 18. DEPARTMENT OF HEALTH SERVICES

LOCAL HEALTH DEPARTMENT SERVICES

ARTICLE 1. PER CAPITA MATCHING FUNDS

Section

- R9-18-101. Definitions
- R9-18-102. Grant Application
- R9-18-103. Review of Application and Awarding of Grant
- R9-18-104. Minimum Standard of Personnel; Waiver
- R9-18-105. Record Retention and Review
- R9-18-106. Notice to Department
- R9-18-107. Renumbered

ARTICLE 1. PER CAPITA MATCHING FUNDS

R9-18-101. Definitions

In this Article, unless otherwise specified:

1. “Application” means the information and documents submitted to the Department by a local health department to obtain approval from the Department to receive funds through a Per Capita Matching Grant.
2. “Business hours” means the specific time period during a day in which a local health department is open to provide local health department services.
3. “Clinical services” means activities performed by a local health department that are:
 - a. Provided to an individual within a local health department building or at a location specified by the local health department, and
 - b. Intended to provide medical or nursing services to the individual.
4. “Communicable disease” means the same as in A.A.C. R9-6-101.
5. “Communicable disease control services” means activities intended to identify, prevent, or reduce the incidence, spread, or severity of communicable diseases.
6. “Department” means the Arizona Department of Health Services.
7. “Designated service area” means a geographical section of Arizona, specified by a local health department, in which local health department services are provided.
8. “Direction” means the same as in A.R.S. § 36-401.
9. “Electronic” means the same as in A.R.S. § 44-7002.

10. "Environmental health services" means activities intended to identify, prevent, or reduce the exposure of an individual to substances or conditions in air, water, food, soil, or objects with which the individuals may come into contact, which may adversely impact human health.
11. "Epidemiologic investigation" means the same as in A.A.C. R9-6-101.
12. "Health education" means supplying oral or written information to an individual or a group of individuals for the purpose of enabling the individual or group of individuals to attain or maintain optimal health.
13. "High-risk population" means individuals in a designated service area who have medical, social, financial, or other problems that increase the chances that the individuals will need more help than most other individuals in order to maintain or attain optimal health.
14. "Immunization" means the same as in A.R.S. § 36-671.
15. "Local health department" means the same as in A.R.S. § 36-671.
16. "Local health department services" means activities performed by a local health department within a designated service area that:
 - a. Are funded in part by a Per Capita Matching Grant;
 - b. Assist individuals, groups of individuals, and populations to improve health and prevent disease;
 - c. Address:
 - i. Communicable disease control services,
 - ii. Maternal and child health services, or
 - iii. Environmental health services; and
 - d. Include activities such as:
 - i. Providing public health nursing services;
 - ii. Providing clinical services to individuals;
 - iii. Providing health education;
 - iv. Performing epidemiologic investigations;
 - v. Planning for public health emergencies and mobilizing community resources during emergencies;
 - vi. Assisting individuals to access state or federal health programs;
 - vii. Coordinating local services concerning nutrition, health-related services, financial assistance with health-related expenses, or other services needed by an individual;
 - viii. Serving as a resource for local programs; and
 - ix. Evaluating the effects of activities and services provided by the local health department.
17. "Maternal and child health services" means activities, such as those specified in A.R.S. § 36-132, that are intended to promote the health of women and children.
18. "Medical services" means the same as in A.R.S. § 36-401.
19. "Modification" means a change to the local health department services identified in a local health department's narrative plan, as specified in R9-18-102(A)(1)(b).

20. "Nursing services" means the same as in A.R.S. § 36-401.
21. "Per Capita Matching Grant" means an allocation of funds by the Department to a local health department as provided in A.R.S. § 36-189.
22. "Population" means a group of individuals who share a specific characteristic or set of characteristics.
23. "Public health emergency" means any local emergency, as defined in A.R.S. § 26-301, that may affect the health of individuals or populations within a designated service area.
24. "Public health nursing services" means activities performed by a local health department within a designated service area that include:
 - a. Assessing the health and health needs of individuals and populations;
 - b. Developing and administering nursing services to meet the health needs of high-risk populations;
 - c. Evaluating the effects of nursing services on the health of an individual or a population;
 - d. Coordinating nursing or medical services for an individual or a population;
 - e. During planning for public health emergencies, recommending strategies to meet the health needs of individuals and high-risk populations; and
 - f. Performing nursing services in response to public health emergencies.
25. "Registered nurse" means an individual licensed under A.R.S. Title 32, Chapter 15, Article 2, to practice professional nursing, as defined in A.R.S. § 32-1601.
26. "Registered sanitarian" means an individual who meets the requirements for a registered sanitarian specified in A.R.S. § 36-136.01 and 9 A.A.C. 16, Article 4.
27. "Service population" means the specific group of individuals who are eligible to receive local health department services from a local health department.
28. "State fiscal year" means the period from July 1 of one year through June 30 of the following year.
29. "Submit" means to send a document from a local health department to the Department by mail, electronically, or by an express package delivery service.
30. "Supervision" means the same as in A.R.S. § 36-401.

R9-18-102. Grant Application

- A.** A local health department may request funds from the Department through a Per Capita Matching Grant by submitting an application to the Department that includes:
1. A narrative plan for the period corresponding to the state fiscal year, which specifically identifies:
 - a. A designated service area;
 - b. The local health department services, such as those specified in R9-18-101(16)(d), which will be provided in the designated service area;
 - c. Which of the local health department services, identified in subsection (A)(1)(b), the local health department provided in the last three years; and

- d. The number of individuals projected to receive the local health department services identified in subsection (A)(1)(b);
 - 2. A budget for the period corresponding to the state fiscal year, which identifies:
 - a. The total cost for providing local health department services within the designated service area;
 - b. A list of all sources of funds to be used by the local health department for providing local health department services within the designated service area; and
 - c. The proportionate shares of the total cost to be paid by funds obtained from the sources listed in subsection (A)(2)(b);
 - 3. A chart that shows the organizational structure of the local health department, including:
 - a. The names of the incumbents in each position; and
 - b. A designation of the types of local health department services performed by the incumbent in each position; and
 - 4. The signature of an individual authorized by the local health department's County Board of Supervisors, under A.R.S. § 11-201, to submit the application.
- B.** A local health department shall submit an application to the Department so that the application is:
- 1. Received by the Department on or before December 31 of the current state fiscal year; or
 - 2. Postmarked, or accepted for delivery by an express package delivery service, on or before December 31 of the current state fiscal year, and received by the Department on or before January 5 of the current state fiscal year.
- C.** A local health department shall furnish to the Department any other information as may be requested by the Department, as specified in R9-18-103(A)(2), to clarify incomplete or ambiguous information contained in the local health department's application.

R9-18-103. Review of Application and Awarding of Grant

- A.** Within 15 calendar days of the receipt of an application from a local health department, the Department shall:
- 1. Review the application to determine whether the application:
 - a. Contains all the information specified in R9-18-102(A); and
 - b. Was submitted as specified in R9-18-102(B);
 - 2. Request from the local health department any additional information necessary to clarify incomplete or ambiguous information contained in the local health department's application;
 - 3. Award a Per Capita Matching Grant to the local health department for the purposes set forth in the application if the application:
 - a. Meets the criteria specified in subsection (A)(1); or
 - b. Meets the criteria specified in subsection (A)(1)(b), and the local health department furnishes to the Department the information requested under subsection (A)(2) within seven calendar days of the Department's request; and
 - 4. Notify the local health department in writing whether the Per Capita Matching Grant is awarded or denied, including, if the Per Capita Matching Grant is denied, the reason for the denial.

B. If a Per Capita Matching Grant is awarded to a local health department, the Department shall authorize payment of per capita matching funds to the local health department within 30 days of the receipt of an application.

R9-18-104. Minimum Standard of Personnel; Waiver

A. For clinical services delivered by a local health department, a local health department shall ensure that:

1. A physician licensed under A.R.S. Title 32, Chapter 13 or 17 provides direction for medical services; and
2. A registered nurse provides direction for and supervision of nursing services.

B. Except as provided in subsection (C), a local health department shall ensure that:

1. A registered nurse provides direction for public health nursing services; and
2. The registered nurse specified in subsection (B)(1) has:
 - a. A baccalaureate degree in the science of nursing from an institution accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education; or
 - b. Five years experience providing public health nursing services.

C. A local health department may submit to the Department a request for a waiver of the requirement in subsection (B)(2) that includes:

1. The reason for the request, including what burden the requirement would impose upon the local health department;
2. The education and experience of the registered nurse, specified in subsection (B)(1), that would qualify the registered nurse to perform public health nursing services;
3. A description of the educational activities the local health department plans to provide for the registered nurse to address differences between the education and experience of the registered nurse and the education and experience of a registered nurse who meets the requirements of subsection (B)(2); and
4. How the waiver would affect public health, safety, or welfare.

D. The Department shall approve or deny a request made as specified in subsection (C):

1. Within 14 calendar days from the date of the Department's receipt of the request, and
2. Based on:
 - a. The education and experience of the registered nurse,
 - b. The activities described in the narrative plan, specified in R9-18-102(A)(1), and
 - c. The content of the educational activities described as specified in subsection (C)(3).

E. A registered nurse who is providing direction for public health nursing services within the state of Arizona on the effective date of this Article is exempt from the requirement of subsection (B)(2).

F. A local health department shall ensure that a registered sanitarian provides environmental health services in the designated service area.

R9-18-105. Record Retention and Review

A. A local health department shall maintain for review by the Department all records, reports, and accounts pertaining to the provision of local health department services.

- B.** A local health department shall maintain or store the documents specified in subsection (A) for five years from the date the local health department submitted an application, unless the Department performs a financial review of local health department services before that date. If the Department performs a financial review, the local health department shall maintain or store the documents until any dispute arising from the financial review is resolved or for five years, whichever is later.
- C.** Upon request by the Department, a local health department shall make available the documents specified in subsection (A) to the Department during business hours.
- D.** The Department may require a refund of any funds paid to a local health department under a Per Capita Matching Grant that are expended for purposes not set forth in the narrative plan described in R9-18-102 (A)(1).

R9-18-106. Notice to Department

A local health department shall provide written notice to the Department within 30 calendar days of any change in the physician, registered nurse, or sanitarian who are specified in R9-18-104, and of any modification to the narrative plan described in R9-18-102(A)(1).

Historical Note

Adopted effective April 22, 1988 (Supp. 88-2). Former R9-18-106 repealed; new R9-18-106 renumbered from R9-18-107 and amended by final rulemaking at 12 A.A.R. 3715, effective November 11, 2006 (Supp. 06-3).

ATTACHMENT B – STATUTES

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of

schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name

and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

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

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

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards

for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

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

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

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

36-189. State participation in establishment and maintenance of local health departments and local health services

A. The department of health services may use monies at its disposal and not otherwise appropriated to match monies provided by cities and counties to establish and maintain local health department services for any city or county, on such reasonable terms as it establishes by rule. From the appropriation made for purposes of this section, the department of health services shall reimburse local health departments, which meet minimum standards of personnel and performance established by the director of the department of health services and, on submission and approval of a plan and budget by such local health departments, fifty percent of the portion of the total approved budget not in excess of one dollar twenty-five cents per capita or a prorated portion thereof if sufficient monies are not available to meet the approved requests. If annual expenditures of the local health department are less than the amount budgeted, the total state reimbursement to such department for the year shall not exceed the appropriate percentage of the amount actually expended by such local health department. The department of health services, in addition, may provide federal monies or services for demonstrations, studies and special projects, or for emergencies.

B. The Arizona health care cost containment system may use monies at its disposal, including federal monies available to the state for this purpose, and not otherwise appropriated to contract for the establishment and maintenance of local mental health facilities and services to be provided by either private or public agencies. Monies available for this purpose shall be expended only for local mental health facilities and services. The Arizona health care cost containment system administration shall

advance or reimburse monies to local agencies that have submitted and obtained approval of an annual plan and budget. The annual amount of state matching funds provided shall not exceed seventy-five percent of the total annual amount of monies and value of in-kind resources used by the agency to establish and maintain local mental health facilities and services.

TITLE 9. HEALTH SERVICES
CHAPTER 18. DEPARTMENT OF HEALTH SERVICES
LOCAL HEALTH DEPARTMENT SERVICES
ARTICLE 1. PER CAPITA MATCHING FUNDS

ECONOMIC IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 18. DEPARTMENT OF HEALTH SERVICES

LOCAL HEALTH DEPARTMENT SERVICES

ARTICLE 1. PER CAPITA MATCHING FUNDS

1. Identification of the rule

A.R.S. § 36-189 authorizes the Arizona Department of Health Services (Department) to use funds “not otherwise appropriated to match funds provided by cities and counties to establish and maintain local health department services” and authorizes the Department to establish by rule reasonable terms that local health departments must meet in order to receive matching funds. If a local health department meets the minimum standards of personnel and performance established by the Department, and submits a plan and budget that is approved by the Department, the Department is required to reimburse the local health department, from funds appropriated for this purpose, an amount up to 50% of the budget, but not in excess of \$1.25 per capita. Similar statutory authority is provided in A.R.S. § 36-132(A)(2)

A.A.C. R9-18-101 through R9-18-107 implement A.R.S. §§ 36-189 and 36-132 by providing the standards, terms, and procedures under which the matching funds are distributed to local health departments. This rulemaking, which is the first time the rules have been amended since the rules became effective on April 22, 1988, adds definitions of undefined terms, establishes consistent definitions for other terms, corrects grammatical errors, clarifies and simplifies the application process, updates the standards for personnel for consistency with current statute, and conforms to rulemaking format and style requirements of the Council and the Office of the Secretary of State.

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

a. Cost bearers

- The Department
- Local health departments

b. Beneficiaries

- The Department
- Local health departments
- Society in general

3. **Cost/Benefit Analysis**

Annual costs or revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

Description of Affected Groups	Description of effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Reviewing, writing, and implementing the new rules	Moderate	Minimal to moderate
Local health departments	Gathering information for and completing the application for the grant	None	Minimal to moderate
	Implementing an educational plan for a registered nurse who does not have a BSN or five-years experience	Minimal	None
	Retaining records for five years	Minimal	None
B. Privately Owned Business – not applicable			
C. Consumers			
Community at large	Increase in services provided by local health departments	None	Minimal to moderate
	Improved services as a result of additional training of nurses	None	Minimal

Cost Bearers

- The Department bears moderate costs related to reviewing, writing, and directing the rules through the rulemaking process. Other activities associated with the provisions of the amended rules are not expected to increase the cost to the Department.
- The current rules contain a provision for local health departments to request a waiver for registered nurses without a baccalaureate degree who provide community health services. The amended rules require a local health department to submit, as part of a waiver request, a description of educational activities the local health department plans to provide to a registered nurse without a baccalaureate degree or five years experience who is providing public health nursing services (R9-18-104(C)(3)). Within the last two years, the Department has received no requests for a waiver, and registered nurses already providing public health nursing services on the date the amended rules become effective are exempt from the requirement of a

baccalaureate degree or five years experience. If a local health department hires a registered nurse without a baccalaureate degree or five years experience to direct public health nursing services, the local health department may incur minimal costs associated with implementing the plan of educational activities for the registered nurse for whom a waiver is requested. The amended rules also require local health departments to retain records for five years, rather than three years as specified in the current rules. Contracts between local health departments and the Department to provide many of the local health department services for which records need to be retained already require a five-year record retention period. The amended rules align the records retention policy specified in rule with current contract requirements. Local health departments may incur a minimal cost from the requirement to retain records for five years rather than three years.

Beneficiaries

- The rulemaking simplifies the application process for local health departments (R9-18-102(A)), reducing the amount of information that must be collected, assembled, and submitted to the Department. Not only will the simplified application process and improved clarity of the rules reduce the amount of time incurred by local health departments in applying for these funds, the Department will benefit to a minimal to moderate degree from the reduced time it will take to review the simplified application and from the clarification of requirements.

The Department estimates that it currently costs the Department approximately \$2,200 to prepare and send out the grant application, review applications, prepare the paperwork to allow the Department to disburse the funds, authorize payment of the funds, and make the payments. While some of these costs will remain under the process set out in the amended rules, the Department estimates that costs may be cut in half.

The Department requested information from local health departments on the costs the local health departments incur in applying for per capita matching funds under the current rules. The information provided by eight of the 13 counties eligible to receive per capita matching funds indicated that the time to complete the application ranged from approximately 7 hours to over 40 hours, involved from three to nine individuals, and cost local health departments from \$300 to almost \$2,000. The time, number of individuals, and costs required to complete the simplified application are projected to be reduced as a result of the amended rules.

- The general public will benefit to a minimal to moderate degree from the amended rules to the extent that a local health department will be able to spend more time and money on the

provision of services to the individuals within the local health department's designated service area rather than in preparing the application for the per capita matching funds. If a local health department hires a registered nurse without a baccalaureate degree or five years experience to direct public health nursing services and provides additional education to the registered nurse, the general public may also benefit from an improvement in the quality of public health nursing services that are directed by the registered nurse as a result of the additional training

The Department has determined that the benefits to public health and safety outweigh the costs associated with this rulemaking.

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

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

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

a. Identification of the small businesses subject to the rules

No small businesses are subject to these rules

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

None

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

Not applicable

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

The probable costs and benefits to private persons and consumers are contained in the cost/benefit analysis in paragraph (3).

6. A statement of the probable effect on state revenues

None

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

There are no less intrusive or less costly alternatives for achieving the purpose of the rule

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 4, Articles 12-17, Department of Financial Institutions



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 10, 2020

**SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
(F21-0106)**
Title 20, Chapter 4, Articles 12-17, Department of Financial Institutions

Summary

This Five Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 4, Articles 12-17, regarding the Department of Financial Institutions. The Department of Financial Institutions was merged with the Department of Insurance on July 1, 2020 to create a new agency, the Department of Insurance and Financial Institutions. The former Department of Financial Institutions is now a division of the new agency, known as the Division of Financial Institutions.

The rules under review address the following:

- **Article 12: Rules of Practice and Procedure before the Superintendent;**
- **Article 13: Loan Originators;**
- **Article 14: Investigations;**
- **Article 15: Collection Agencies;**
- **Article 16: Acquiring Control of Financial Institutions; and**
- **Article 17: Arizona Interstate Bank and Savings and Loan Association Act.**

In the previous 5YRR for these rules, which the Council approved in March 2016, the Department indicated the following:

- **Article 12:** amend certain rules as identified in Item 10 of this 5YRR; did not complete the proposed course of action;
- **Article 13:** no proposed course of action;
- **Article 14:** amend certain rules as identified in Item 10 of this 5YRR; did not complete the proposed course of action as the Department finds it no longer necessary;
- **Article 15:** proposed certain changes as identified in Item 10 of this 5YRR; did not complete the proposed course of action;
- **Article 16:** proposed certain changes as identified in Item 10 of this 5YRR; did not complete the proposed course of action; and
- **Article 17:** proposed certain changes as identified in Item 10 of this 5YRR; did not complete the proposed course of action.

Proposed Action

- **Article 12:** the Department proposes to conduct a rulemaking to update the rules in Article 12 during Fiscal Year 2021;
- **Article 13:** the Department does not propose any changes to the rules in Article 13;
- **Article 14:** the Department proposes to make a determination about the timeframe to amend the rules in Article 14 in 2021;
- **Article 15:** the Department proposes to make a determination about the timeframe to amend the rules in Article 15 in 2021;
- **Article 16:** the Department proposes to make a determination about the timeframe to amend the rules in Article 16 in 2021; and
- **Article 17:** the Department proposes to make a determination about the timeframe to amend the rules in Article 17 in 2021.

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:**

The Department indicates it has not identified any adverse economic impact on the Division of Financial Institutions, the regulated community or the public since the last 5YRR for these rules.

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

The Department indicates that the rules in this Article have been in place for a long time and do not impose additional costs beyond the costs imposed under the Arizona Administrative Procedures Act (the “Act”) because the intention is to provide guidance to parties subject to the Act. Therefore, the Department indicates that the benefits of the rules in Article 12 outweigh the probable costs on the persons regulated necessary to achieve the regulatory objective. It further indicates that the rules under review are necessary to fulfill the agency’s mission.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. For all of the Articles under review, 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 for each of the Articles under review, the rules therein are clear, concise, and understandable.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

Yes. The Department states that for each of the Articles under review, the rules therein are consistent with other rules and statutes.

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

Yes. The Department states that for each of the Articles under review, the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that for each of the Articles under review, the rules are enforced as written.

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

Article 12: No federal laws apply to the rules in this Article.

Article 13: No. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5100, et seq. (S.A.F.E. act) affects the licensing of loan originators. The S.A.F.E. Act establishes federal registration requirements for any individual who acts as a residential mortgage loan originator and is employed by a financial institution and certain subsidiaries. The S.A.F.E. Act requires mortgage loan originators to register with the

NMLS and Registry. The Department states that the rules in Article 13 are not more stringent than the S.A.F.E. act.

Article 14: No. The rules in this Article relate to the Department's authority to issue subpoenas and receive fingerprints. The Department states that these rules are not more stringent than any federal laws that may apply to financial institutions or loan originators.

Article 15: No. Two federal laws apply to the rules in this Article: the Fair Credit Reporting Act ("FCRA") (15 U.S.C. §§ 1681 through 1681x) and the Fair Debt Collection Practices Act ("FDCPA") (15 U.S.C. §§ 1692 through 1692p). The rules are not more stringent than these corresponding federal laws.

Article 16: Yes. For the reasons stated in the 5YRR, the Department states that certain rules in this Article are more stringent than corresponding federal law.

Article 17: Yes. For the reasons stated in the 5YRR, the Department states that certain rules in this Article are more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Article 12: none of the rules in this Article require a permit, license, or agency authorization;

Article 13: the statutes applicable to these rules require the issuance of an individual loan originator license, which qualifies for an exemption pursuant to A.R.S. § 41-1037(A)(2).

Article 14: none of the rules in this Article were adopted after July 29, 2010;

Article 15: none of the rules in this Article were adopted after July 29, 2010;

Article 16: none of the rules in this Article were adopted after July 29, 2010; and

Article 17: none of the rules in this Article were adopted after July 29, 2010.

11. Conclusion

Council staff finds that the Department submitted an adequate report that complies with the requirements of A.R.S. § 41-1056. However, Council staff notes that the Department identifies rules in Articles 16 and 17 that are more stringent than corresponding federal law, but does not propose a specific timeframe to amend those rules in this report. Relatedly, the Department does not propose a specific month and year by which it intends to conduct a rulemaking to address issues identified in this report. Further, the Department identified these rules as being more stringent than corresponding federal law and proposed to amend them in its last 5YRR for these rules.

The Department advised Council staff that it does not have a definite timeline to make changes at this time because the previous Department of Financial Institutions merged with the Department of Insurance on July 1, 2020, forming the new Department of Insurance and Financial Institutions. The rules under review relate to the former Department of Financial Institutions, which is now a Division within the new Department and no longer has its own Superintendent. The Department said that due to the merger and the change in structure, it still needs to make a determination as to when the changes can be made.

Council staff recognizes the unique circumstances surrounding the Department and the rules under review. However, the rules in this report that are identified as being more stringent than corresponding federal law impose an unnecessary burden on the regulated community. Council staff notes that a rulemaking to amend these rules would potentially qualify for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6). Council staff recommends approval of this report, but encourages the Council and the Department to agree on a definite timeframe to amend the rules that are more stringent than corresponding federal law.



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

Douglas A. Ducey, Governor
Evan Daniels, Director

November 18, 2020

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

RE: Arizona Department of Financial Institutions¹
Title 20, Chapter 4, Articles 12, 13, 14, 15, 16 & 17
Five Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Insurance and Financial Institutions, Division of Financial Institutions ("Department") for A.A.C. Title 20, Chapter 4, Articles 12, 13, 14, 15, 16 and 17 which is due on November 30, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

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

Sincerely,

A handwritten signature in blue ink that reads "Evan Daniels".

Evan Daniels
Director

¹ On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

The Arizona Department of Insurance and Financial Institutions
Division of Financial Institutions

Five-Year Review

A.A.C. Title 20, Chapter 4, Articles 12, 13, 14, 15, 16 and 17

November 2020

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions¹

Article 12. Rules of Practice and Procedure before the Superintendent

November 30, 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. § 6-138 (Authority to conduct hearings)

2. The objective of each rule:

Rule	Objective
R20-4-1201	Scope of Article. The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Arizona Administrative Code (hereinafter, the “Code”) so that the public and the regulated community will better comprehend it.
R20-4-1202	Definitions. The objective of the rule is to augment the definitions provided in the Arizona Administrative Procedures Act (A.R.S. § 41-1001 and §§ 41-1091 through 41-1092.12) for terms used in Article 12.
R20-4-1204	Filing; Service. The objective of the rule is to provide procedures for filing and serving documents pertinent to contested cases and appealable agency actions.
R20-4-1208	Commencement of Proceedings; Notice of Hearing. The objective of the rule is to identify appealable agency actions or contested cases appropriate for obtaining a hearing for any party who may be adversely affected or whose legal rights, duties, or privileges are determined by an appealable agency action or contested case issued by the Division.
R20-4-1209	Answer to Notice of Hearing. The objective of the rule is to specify those eligible to respond to a notice of hearing, the time limits for filing a response, the required content of any response, the effect of a default, and the effect of a failure to state a defense.
R20-4-1210	Stays. The objective of the rule is to specify the circumstances under which an aggrieved person may request a stay of an order from the Deputy Director until the matter can be heard and decided in a hearing.
R20-4-1211	Intervention. The objective of the rule is to specify those persons entitled to intervene in a proceeding before the Division.
R20-4-1219	Rehearing. The objective of the rule is to specify the procedures and grounds for obtaining a rehearing of a matter decided by the Director.
R20-5-1220	Consent Agreements. The objective of the rule is to specify the circumstances that permit the resolution of a proceeding by consent agreement.

3. Are the rules effective in achieving their objectives?

Yes X* No ___

¹ On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

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:

In its 2015 5-Year Review, the Division stated that it was unable to locate the Economic, Small Business and Consumer impact Statement that was submitted with the last amendment to the Rules contained in Article 12 which occurred in September, 2001. (7 A.A.R. 4262, September 12, 2001.) In the intervening period, the Division has not identified any adverse economic impact on the Division, the regulated community or the public.

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?

In its 2015 5-Year Review Report, the Division proposed changes to rules R20-4-1202, R20-4-1204, R20-4-1208, R20-4-1209 and R20-4-1219. The Division failed to effectuate these changes. However, on July 1, 2020, the Arizona Department of Financial Institutions ("Department") and the Arizona Department of Insurance merged into a new agency called the Arizona Department of Insurance and Financial Institutions. The Department is now a division of the new agency. The new agency is in the process of reconciling its hearing rules between the two divisions and plans to run a rulemaking within fiscal year 2021.

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:**

These rules in this Article have been in place for a long time and do not impose additional costs beyond the costs imposed by the Arizona Administrative Procedures Act (the “Act”) because their intention is to provide guidance to parties subject to the Act. However, since the rules are outdated, the Division proposes to update the rules to make them more consistent with the rules used by the insurance division. The rule changes are not intended to add any additional costs to parties subject to the Act. Instead, the rule changes should further clarify what is expected of parties subject to the Act. Therefore, the benefit of the rules in Article 12 outweigh the probable cost of the rules, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency’s mission.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

No federal laws apply to the rules in this Article. These rules dovetail with and augment the Arizona Administrative Procedures Act found at ARS §§ 41-1092, *et seq.*

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

The Department of Insurance and Financial Institutions plans to run a rulemaking to update these rules in this Article during fiscal year 2021.

*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions²

Article 13. Loan Originators

November 30, 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-991, *et seq.*

2. The objective of each rule:

Rule	Objective
R20-4-1301	Scope of Article. The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Arizona Administrative Code so the public and the regulated community has a clear understanding of who is licensed and the required conduct of a licensee. The correlate statutes for the Article are found at the Loan Originators Act (A.R.S. §§ 6-991 through 6-991.22).
R20-4-1302	Course of Study to Qualify for Licensure. The object of this rule is to provide clarity to the loan originator as to what courses will be acceptable to the Division. The rule is to further clarify the number of hours of education required to be taken.
R20-4-1303	Financial Responsibility. The objective of the rule is to detail the ways a licensee can demonstrate they are financially responsible.
R20-4-1304	Fees. The objective of the rule is to specify the program fee amounts set by the Division pursuant to A.R.S. §§ 6-126, 6-991.03, 6-991.04, and 6-991.07. It provides clear guidelines on the fees required to be paid in order to apply for and maintain the license.
R20-4-1305	Practice and Procedure. The object of this rule is to provide the process for loan originators to challenge information that the Division enters into the nationwide mortgage licensing system (NMLS) and registry.

3. Are the rules effective in achieving their objectives? Yes X* No

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

² On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

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 adopted rules are intended to satisfy statutory requirements outlined in the loan originator statutes (A.R.S. §§ 6-991 through 6-991.22). The rules specify the following: who the rules are intended for; what is required in the course of study for pre-licensure and continuing education; how to demonstrate financial responsibility; the fees for application, licensure, and maintenance of the license; and the practice and procedure for challenging information that the Division enters into the NMLS and Registry. The rules are intended to establish the details for compliance in these areas.

With the adoption of these rules in 2011, the Division indicated that the fees for loan originators was among the lowest of the licensing fees charged by the Division. The consumer protection benefit offsets these fees because loan originators are required to be more accountable and knowledgeable. No change in impact is noted since the submission of the Division's Five Year Review Report in 2015.

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?**

This Article was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011. The 2015 5-Year Review Report was the Division's first rule review. In that report, the Division did not suggest any changes to these 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:**

The Division has determined that the probable benefits of the rule outweigh the probable costs of the rule because the Article provides guidance to licensees for complying with the statutory sections regulating their license. The rule imposes the least burden and costs to regulated persons for the same reason. The rules support the Division's regulatory objective of licensing and regulating loan originators.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“S.A.F.E. Act,” 12 U.S.C. 5100, *et seq.*), also affects the licensing of loan originators. The S.A.F.E. Act establishes federal registration requirements for any individual who acts as a residential mortgage loan originator and is employed by a financial institution and certain subsidiaries. The S.A.F.E. Act requires mortgage loan originators to register with the NMLS and Registry.

The Division’s rules are not more stringent than the Federal Law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Division adopted Article 13 on April 22, 2011 (16 A.A.R. 2401, April 22, 2011). The Article does not require issuance of a general permit. Instead, the statutes require issuance of an individual loan originator license. The requirement for the individual license falls under the exemption of A.R.S. §§ 41-1037(A)(2).

14. Proposed course of action

The Division has no proposed changes to suggest at this time.

*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

Financial Institutions Division

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions³

Article 14. Investigations

November 30, 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. § 6-124

2. The objective of each rule:

Rule	Objective
R20-4-1401	Definitions. The objective of the rule is to specify the meaning of terms used in this Article of the Code. The authority for the Division to conduct investigations and examinations is enacted at A.R.S. § 6-124. This rule notifies a licensee what an examination or investigation entails.
R20-4-1403	Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power. The objective of the rule is to specify the method of service of a subpoena issued by the Division and the circumstances in which the Division may issue or amend a subpoena.
R20-4-1405	Fingerprints; Background Information. The objective of this rule is to provide guidance to the Division as to permissible persons who may be the subject of an examination or investigation. It also provides clarity regarding the ability to obtain a criminal record on such persons.

3. Are the rules effective in achieving their objectives? Yes X* No ___

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

³On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different than either it projected in the economic impact statement when the Article was last amended (9 A.A.R. 4653, December 6, 2003) or reported in its 2015 5-Year Review Report.

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?**

The Division has not completed the two actions it proposed in its 2015 5-Year Review Report:

R20-4-1401: Amend the definition of "Licensee" to clarify that this references financial institutions and financial enterprises licensed with the Division because not every financial institution or enterprise is a licensee of the Division.

This change is unnecessary at this time because the Division has not received any comments from the regulated public that any confusion exists as to who is a "licensee."

R20-4-1405: Clarify the rule as it relates to whom the Division has the authority to fingerprint.

This change is also unnecessary because A.R.S. § 6-123.01 authorizes the Division to fingerprint various persons.

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

The benefit of the rules in Article 14 outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective.

These rules govern investigations of financial institutions and enterprises. Real Estate Appraisal, which is also part of the Division, has its own rules governing investigations (Title 4, Chapter 46, Article 3).

These rules only address subpoenas and fingerprints and do not impose unnecessary regulations upon the regulated community because they are informational only.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

The rules only address the Division's authority to issue subpoenas and receive fingerprints. They are not more stringent than any corresponding federal law that may be applicable to financial institutions or loan originators.

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:**

No rule in Article 14 was adopted after July 29, 2010, therefore no analysis for compliance is required.

14. **Proposed course of action**

On July 1, 2020, the Arizona Department of Financial Institutions merged with the Arizona Department of Insurance to form a new agency: the Arizona Department of Insurance and Financial Institutions. Because of this merger, the title of "Superintendent" has been eliminated and replaced with "Deputy Director." Changes to these rules should be made to reflect these changes and to consider the changes proposed from the 2015 5-Year Review Report.

The Division plans to review this Article along with other rules that may require changes to avoid confusion in the regulated community in 2021 and will make a determination about the timeframe for making changes to this Article at that time.

*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

Division of Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions⁴

Article 15. Collection Agencies

November 30, 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-101(19) which defines “Title” to include Title 32, Chapter 9, and A.R.S. §§ 6-123(1) and (2)

Specific Statutory Authority: A.R.S. §§ 32-1001 through 32-1057

2. The objective of each rule:

Rule	Objective
R20-4-1501	Definitions. The objective of the rule is to define the terms used in this Article. The correlate statutes are found at the “Collection Agencies Act,” A.R.S. §§ 32-1001 through 32-1057. The rule augments the statutory definitions and informs collection agencies of the meanings of certain terms.
R20-4-1502	Applications. The objective of the rule is to specify the details of the application process for collection agencies for new, renewal and provisional licenses, and to list the documents applicants must submit in support of an application.
R20-4-1503	Reports. The objective of the rule is to notify collection agencies of their reporting duties in the event certain changes occur.
R20-4-1504	Records. The objective of the rule is to require maintenance of records that allow the Division to examine the collection agencies and determine if their business is conducted in compliance with applicable law and regulations. It also notifies licensees of the types of information the Division expects them to maintain for examination purposes. The rule also defines the length of time a collection agency must retain its records.
R20-4-1505	Trust Account. The objective of the rule is to require that a collection agency keep funds collected for creditor clients segregated from the collection agency’s money and, thereby, to protect the interests of both creditor clients and debtors. It gives collection agencies guidelines on handling client funds.
R20-4-1506	Articles of Incorporation; Bylaws; Organizing Documents. The objective of the rule is to specify what documentation is required in a collection agency’s licensing file and how long the licensee has to provide changes to the Division after amending articles of incorporation or bylaws.
R20-4-1507	Representations of Collection Agency’s Identity. The objective of the rule is to specifically limit the content of representations a collection agency may make about its identity in its contacts with debtors.
R20-4-1508	Representations of the Law. The objective of the rule is to specifically limit the content of representations a collection agency may make about the state of the law in

⁴ On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

	its contacts with debtors and specify the types of representations that are prohibited.
R20-4-1509	Representations as to Fees, Costs and Legal Proceedings; Disinterested Council Required. The objective of the rule is to specifically limit the content of representations a collection agency may make about collection of attorney's fees, collection costs, or the imminence of legal proceedings in its contacts with debtors. It also requires that attorneys representing the collection agency have no personal or financial interest in the collection agency.
R20-4-1510	Representations as to Rights Waived or Remedies Available. The objective of the rule is to specifically limit the content of representations a collection agency may make about the debtor's rights and remedies in its contacts with debtors.
R20-4-1511	Prohibition of Harassment. The objective of the rule is to specifically limit the content of persuasive communications a collection agency may employ in its contacts with debtors and that they are subject to penalties for any violations.
R20-4-1512	Contacts with Debtors and Others. The objective of the rule is to specifically limit the content of, and the parties to, telephonic communications a collection agency may employ in its efforts to collect a debt. It also allows a collection agency to serve third parties after judgment against a debtor has been entered.
R20-4-1513	Cessation of Communication with the Debtor. The objective of the rule is to cut off contacts by a collection agency with a debtor who is represented by a lawyer. This section also specifies the duties of a collection agency notified in writing by a debtor that the debtor either refuses to pay a debt or that the debtor no longer wants to communicate with the collection agency and specified certain limited communications that can occur after that notification.
R20-4-1514	Disclosure of Information to Debtor. The objective of the rule is to require disclosure by a collection agency of specified factual information to debtors from whom it attempts to collect debts and to allow the debtor to access to the information and copies free of charge.
R20-4-1515	Aiding and Abetting. The objective of the rule is to prohibit a collection agency's use of an unlicensed party using prohibited practices to collect debts in violation of these rules and statutory law.
R20-4-1516	Advertising. The objective of the rule is to prohibit a collection agency's use of certain specified deceptive advertising practices.
R20-4-1518	Agreements with Clients. The objective of the rule is to state the requirement of a written agreement or acknowledgement between a collection agency and a creditor client. This Section also specifies the minimum contents of the agreement or acknowledgement.
R20-4-1519	License Names and Control. The objective of the rule is to describe the criteria used by the Division to decide the propriety of a collection agency's proposed name. It also requires a collection agency to obtain a separate license for each name that it uses.
R20-4-1520	Representations of Collection Agency Employees' Identity or Position. The objective of the rule is to specify the means by which a collection agency can protect the identity and personal safety of its employees, and ensure the truthfulness of communications with debtors, while preserving the Division's ability to discipline collection agencies and employees of collection agencies.
R20-4-1521	Duty of Investigation. The objective of the rule is to specify the defensive claims of a debtor that a collection agency has an affirmative duty to investigate.

3. Are the rules effective in achieving their objectives? Yes X* No ___

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 Department has not identified any economic impact that is significantly different than either it projected in the economic impact statement when the Article was last amended (R20-4-1502, R20-4-1504, and R20-4-1505 amended at 6 A.A.R. 4742, November 13, 2000; R20-4-1501, R20-4-1503, and R20-4-1506 through R20-4-1521 amended at 12 A.A.R. 1331, June 4, 2006.) or reported in its 2015 5-Year Review Report.

The Division has not seen any detrimental impact on collection agencies in the State and continues to maintain a healthy number of entities holding this type of license.

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?

The Division proposed the following changes in its 2015 5-Year Review Report:

Rule	Explanation
R20-4-1501	Amend the statutory reference in the definition of "collection agency".
R20-4-1502	Amend to clarify duplications, and incorrect references.
R20-4-1503	Amend by removing Subsection (B).
R20-4-1504	Amend to clarify the confusion of "timely manner".
R20-4-1505	Correct an ARS citation from A.R.S. §44-307 to A.R.S. §44-317. (This is transposed. The citation is currently to A.R.S. § 44-317 and should be to A.R.S. § 44-307.)
R20-4-1512	Amend Subsection B and remove Subsection C.

None of the proposed changes have been implemented by the Division.

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

The benefit of the rules in Article 15 outweighs the probable costs of the rules and imposes the least burden and cost to the persons regulated necessary to achieve the regulatory objective. Most of the proposed changes to the rules are not substantive in nature. However, if the Division decides to remove the requirement to license each dba a collection agency uses, the costs to licensees will be reduced appreciably.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Collection agencies are also subject to two federal laws: the Fair Credit Reporting Act (“FCRA”) (15 U.S.C. §§ 1681 through 1681x) and the Fair Debt Collection Practices Act (“FDCPA”) (15 U.S.C. §§ 1692 through 1692p). The Federal Trade Commission enforces the FCRA and the Consumer Financial Protection Bureau enforces both Acts.

Article 15 is not more stringent than the 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:**

No rule in Article 15 was adopted after July 29, 2010. Therefore no analysis for compliance is required.

14. **Proposed course of action**

On July 1, 2020, the Arizona Department of Financial Institutions merged with the Arizona Department of Insurance to form a new agency: the Arizona Department of Insurance and Financial Institutions. Because of this merger, the title of “Superintendent” has been eliminated and replaced with “Deputy Director.” Changes to these rules should be made to reflect these changes and to accomplish the changes proposed from the 2015 5-Year Review Report.

The Division plans to review this Article along with other rules that may require changes to avoid confusion in the regulated community in 2021 and will make a determination about the timeframe for making changes to this Article at that time.

*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

Division of Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Financial Institutions⁵

Article 16. Acquiring Control of Financial Institutions

November 30, 2020

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 6-123(1) and (2)

Specific Statutory Authority: A.R.S. § 6-145(A)

2. The objective of each rule:

Rule	Objective
R20-4-1601	Definitions. The objective of the rule is to provide definitions for the terms used in Article 16, and in the application package. The correlate statutes are found at the “Acquisition of Control of a Bank, Trust Company or Savings and Loan Association Act” found at A.R.S. §§ 6-141 through 6-153.
R20-4-1602	Application for Approval to Acquire Control of Financial Institution. The objective of the rule is to provide the form of application required by A.R.S. § 6-145(A), and to prescribe the form and the information, data or records which may be required in the application package.

3. Are the rules effective in achieving their objectives? Yes X* No ___

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

⁵ On July 1, 2020, the Arizona Department of Financial Institutions merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Financial Institutions is now a division of the new agency called the Division of Financial Institutions.

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different than either it projected in the economic impact statement when the rule was last amended (9 A.A.R. 5055, effective January 3, 2004) or reported in its 2015 5-Year Review Report.

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?

Rule	Explanation
R20-4-1601	In 2015, the Division proposed to amend A.R.S. § 6-141 to change the definition of “control” to 25% to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act (see subsection 12 below). Since the definition in the rule references the statutory definition, the rule will then become aligned with the federal laws. The Division has not made the statutory change.
R20-4-1602	In 2015, The Division proposed a revision to R20-4-1602(B)(4) to adjust the requirements for financial statement information so that it is no more stringent than the Federal Deposit Insurance Act by changing the requirement of “audited financial statements” to correspond with the federal law requiring financial statements be prepared in accordance with generally accepted accounting principles (see subsection 12 below). The Division has not made this change.

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:

Despite the inconsistencies with the Federal laws, the benefit of the rules in Article 16 outweighs the probable costs of the rules, and impose the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The Division is not the primary regulator for most financial institutions because these types of entities are also federally chartered.

12. Are the rules more stringent than corresponding federal laws?

Yes No

Rule	Explanation
R20-4-1601	An inconsistency is noted in the statutory definition of “Control.” A.R.S. 6-141(2) is more stringent in defining control as 15% as compared with the federal banking

	regulations under the Federal Deposit Insurance Act [Codified at 12 U.S.C. 1817(j)(8)(B)] and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25%. R20-4-1601 defines “Control” to have the meaning of A.R.S. § 6-141 which creates the inconsistency in the rule.
R20-4-1602	The rule imposes a more stringent requirement in subsection (B)(4) for persons who make an initial application for control over a financial institution because the rule requires audited financial statements from applicants. Under the Federal Deposit Insurance Act, the requirement for financial statements is that the financial statements are prepared in accordance with generally accepted accounting principles. (12 U.S.C. 1817(j)(6)(B).) The requirement for audited statements as opposed to statements in compliance with generally accepted accounting principles may cause additional cost for each applicant.

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:

No rule in Article 16 was adopted after July 29, 2010. Therefore no analysis for compliance is required.

14. Proposed course of action

On July 1, 2020, the Arizona Department of Financial Institutions merged with the Arizona Department of Insurance to form a new agency: the Arizona Department of Insurance and Financial Institutions. Because of this merger, the title of “Superintendent” has been eliminated and replaced with “Deputy Director.” Changes to these rules should be made to reflect these changes and to accomplish the changes proposed from the 2015 5-Year Review Report.

The Division plans to review this Article along with other rules that may require changes to avoid confusion in the regulated community in 2021 and will make a determination about the timeframe for making changes to this Article at that time.

When a timeframe is determined for making changes to this Article, the Division will remove the definition of “control” from R20-4-1601 to avoid the unauthorized inconsistency with the federal statute. In addition, the Division will revise the unauthorized requirement in R20-4-1602(B)(4) to be consistent with federal law.

*This response applies to all the rules in the Article.

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 Department has not identified any economic impact that is significantly different than either it projected in the economic impact statement when the rules were last amended (11 A.A.R. 2031, effective July 2, 2005) or reported in its 2015 5-Year Review Report.

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?**

Rule	Explanation
R20-4-1701	In 2015, the Division proposed to amend A.R.S. § 6-321(2) to change the definition of “control” to 25% to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act (see subsection 12 below). Since the definition in the rule references the statutory definition, the rule will become aligned with the federal laws when the statute is updated. The Division has not made the statutory change.
R20-4-1704	In 2015, the Division proposed to amend the rule to be consistent with the agency’s new name and also to reduce the delivery of notice of publication to one from two. The Division did not make those proposed changes.

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:**

Except for the requirement to provide two copies of each notice and publisher’s affidavit of publication in R20-4-1704(A), the benefit of the rules in Article 17 outweighs the probable costs of the rules, and impose the least burden and cost on the persons regulated necessary to achieve the regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes X No ___

Rule	Explanation
R20-4-1701	An inconsistency is noted in the statutory definition of “Control.” A.R.S. 6-321(2) is more stringent in defining control as 15% as compared with the federal banking

	regulations under the Federal Deposit Insurance Act [Codified at 12 U.S.C. 1817(j)(8)(B)] and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25%. R20-4-1701 defines “Control” to have the meaning of A.R.S. § 6-321 which also creates the inconsistency in the rule.
R20-4-1704	The rule imposes a more stringent requirement in subsection (A) for applicants of each notice and affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority because the rule requires two copies which may cause additional cost for each applicant.

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:

No rule in Article 17 was adopted after July 29, 2010. Therefore no analysis for compliance is required.

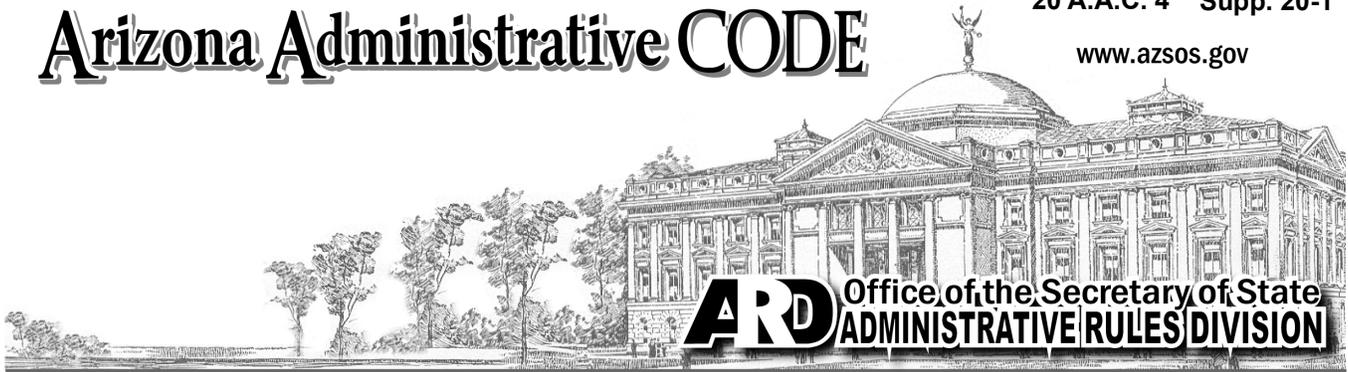
14. Proposed course of action

On July 1, 2020, the Arizona Department of Financial Institutions merged with the Arizona Department of Insurance to form a new agency: the Arizona Department of Insurance and Financial Institutions. Because of this merger, the title of “Superintendent” has been eliminated and replaced with “Deputy Director.” Changes to these rules should be made to reflect these changes and to accomplish the changes proposed from the 2015 5-Year Review Report.

The Division plans to review this Article along with other rules that may require changes to avoid confusion in the regulated community in 2021 and will make a determination about the timeframe for making changes to this Article at that time.

When a timeframe is determined for making changes to this Article, the Division will remove the definition of “control” from the R20-4-1701 to avoid the unauthorized inconsistency with the federal statute. In addition, the Division will revise the requirement in R20-4-1704(A) to one copy to be consistent with federal law.

*This response applies to all the rules in the Article.



TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

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, 2020 through March 31, 2020.

[R20-4-1102](#) [Expired](#) [31](#)

Questions about these rules? Contact:

Department: Arizona Department of Financial Institutions

Address: 100 N 15th Ave, Suite 261

Phoenix, AZ 85007

Telephone: (602) 771-2800

[Website: https://dfi.az.gov/regulatory/rules](https://dfi.az.gov/regulatory/rules)

The Governor's Regulatory Review Council can answer questions about expired rules in this Chapter:

Council: Governor's Regulatory Review Council

Address: 100 N. 15th Ave

Phoenix, AZ 85007

Telephone: (602) 542-2058

The release of this Chapter in Supp. 20-1 replaces Supp. 17-1, 1-48 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

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



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

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

Editor's Note: The Banking Department's name was changed to the Arizona Department of Financial Institutions under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

Editor's Note: Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department changed its name to the Department of Financial Institutions, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 4, consisting of R20-4-101 through R20-4-106, R20-4-201 through R20-4-215, R20-4-301 through R20-4-331, R20-4-401 through R20-4-402, R20-4-501 through R20-4-536, R20-4-601 through R20-4-620, R20-4-701 through R20-4-707, R20-4-801 through R20-4-816, R20-4-901 through R20-4-924, R20-4-1001, R20-4-1101 through R20-4-1102, R20-4-1201 through R20-4-1220, R20-4-1401 through R20-4-1410, R20-4-1501 through R20-4-1530, R20-4-1601 through R20-4-1604, and R20-4-1701 through R20-4-1706, recodified from 4 A.A.C. 4, consisting of R4-4-101 through R4-4-106, R4-4-201 through R4-4-215, R4-4-301 through R4-4-331, R4-4-401 through R4-4-402, R4-4-501 through R4-4-536, R4-4-601 through R4-4-620, R4-4-701 through R4-4-707, R4-4-801 through R4-4-816, R4-4-901 through R4-4-924, R4-4-1001, R4-4-1101 through R4-4-1102, R4-4-1201 through R4-4-1220, R4-4-1401 through R4-4-1410, R4-4-1501 through R4-4-1530, R4-4-1601 through R4-4-1604, and R4-4-1701 through R4-4-1706, pursuant to R1-1-102 (Supp. 95-1).

ARTICLE 1. GENERAL

R20-4-101 through R4-4-106 recodified from R4-4-101 through R4-4-106 (Supp. 95-1).

Article 1, consisting of Sections R4-4-101 through R4-4-106 adopted effective August 16, 1991 (Supp. 91-3).

Article 1, consisting of Sections R4-4-101 through R4-4-104, repealed effective August 16, 1991 (Supp. 91-3).

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Former Article 6, consisting of Section R4-4-601, repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

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Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired April 21, 2011; new Article consisting of Sections R20-4-1301 through R20-4-1305, made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

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ARTICLE 1. GENERAL

R20-4-101. Scope of Article

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3).
R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
 - a. Is knowledgeable about the licensee's Arizona activities;
 - b. Supervises compliance with:
 - i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
 - ii. Other applicable laws and rules; and
 - c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
 - a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
 - b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
 - c. Insurance commissions;
 - d. Contingent or additional interest, including interest based on net operating income; or
 - e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
 - a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
 - i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
 - ii. To a borrower, concerning the location or identity of potential investors or lenders; or
 - b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
 - c. Processing a loan; but
 - d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
 - i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
 - ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
 - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
 - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan

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- simultaneously with terminating an existing loan.
12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
 13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
 - a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
 - c. The licensee has the right to hire and fire the employee and the employee's assistants;
 - d. The licensee directs the methods and procedures for performing the employee's job;
 - e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
 - f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
 14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
 15. "Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
 16. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
 17. "Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
 18. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
 19. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
 20. "Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
 21. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
 22. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
 - a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
 - b. Obtains a completed Employment Eligibility Verification (Form I-9);
 - c. Obtains a completed and signed employment application;
 - d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
 - e. Consults with the applicant's most recent or next most recent employer, if any;
 - f. Inquiries regarding the applicant's qualifications and competence for the position;
 - g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
 - h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
 23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
 24. "Registered to do business in this state" means:
 - a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
 - c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
 - e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:
 - All the current amendments, or
 - A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;
 - f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

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- g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;
 - h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or
 - i. The entity is exempt from registration.
25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.
26. "Resident of this state" means a natural person domiciled in Arizona.
27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:
- a. Lives in Arizona during the entire period of designation as the responsible individual on a license;
 - b. Is in active management of a licensee's affairs;
 - c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
 - d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Historical Note

Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-103. Fingerprints

- A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.
- B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.
- C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:
 - 1. A municipal police department,
 - 2. A local sheriff's office, or
 - 3. Another law enforcement authority recognized by the Superintendent.

Historical Note

Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require addi-

tional information necessary to complete an application or other form.

Historical Note

Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-105. Claims Against a Deposit in Place of Bond

- A. As used in this Section:
 - 1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
 - 2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
 - 3. "Verified claim" means a claim filed with the Superintendent under subsection (B).
 - 4. "Award" means an amount of money granted under subsection (F).
- B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:
 - 1. Against a depositor;
 - 2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
 - 3. Documented by:
 - a. A certified copy of the complaint in the action;
 - b. A certified copy of the judgment in the action;
 - c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
 - d. A statement of any amounts recovered on the judgment; and
 - e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.
- C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.
- D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.
- E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
 - 1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
 - 2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
 - 3. The judgment's execution has been stayed for any reason;

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4. The judgment was procured through fraud or collusion;
 5. The judgment has been satisfied from other sources; or
 6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.
- F.** If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
 2. Amounts previously paid on the judgment.
- G.** A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.
- H.** If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).
- I.** If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
 2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
 - a. Each granted claim shall receive a pro rata share of the total deposit.
 - b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
 - i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
 - ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
 - c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.
- J.** A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.
- K.** The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certi-

fied copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:

1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

- A.** As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.
- B.** The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.
 2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark date of the Department's written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.
 3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.

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4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.
5. The Department shall calculate time limits prescribed in this Section under R2-19-107.
- C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			

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	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	Motor Vehicle Dealer	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note

Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee’s articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Superintendent, an officer of the licensee shall:

1. Certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.

Historical Note

Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-202. Bylaws

A licensee shall deliver to the Superintendent a copy of each amendment to the licensee’s bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1).

R20-4-203. Repealed

Historical Note

Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note

Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1).

Historical Note

Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note

Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage -- A.R.S. § 6-188

A. Each bank shall carry at least the following basic blanket bond coverage:

Banks with Deposits of:	Amounts:
Less than \$750,000	\$25,000
\$ 750,000 to 1,500,000	50,000
1,500,000 to 2,000,000	75,000
2,000,000 to 3,000,000	90,000
3,000,000 to 5,000,000	120,000
5,000,000 to 7,500,000	150,000
7,500,000 to 10,000,000	175,000
10,000,000 to 15,000,000	200,000
15,000,000 to 20,000,000	250,000
20,000,000 to 25,000,000	300,000
25,000,000 to 35,000,000	350,000
35,000,000 to 50,000,000	450,000
50,000,000 to 75,000,000	550,000
75,000,000 to 100,000,000	700,000
100,000,000 to 150,000,000	850,000
150,000,000 to 250,000,000	1,200,000
250,000,000 to 500,000,000	1,700,000
500,000,000 to 1,000,000,000	2,500,000
1,000,000,000 to 2,000,000,000	4,000,000
Over 2,000,000,000	6,000,000

B. Each bank shall supplement the bankers blanket bond coverage with at least a \$1,000,000 excess fidelity bond. Effective 8-8-73.

R20-4-207. Capital Obligations

A. An applicant for a Superintendent’s order of approval to issue a capital obligation shall submit the following documents to

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the Superintendent, and shall not issue any capital obligation before the Superintendent issues the order of approval. The required documents are:

1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;
 2. A copy of the agreement underlying the capital obligation;
 3. A copy of the note or debenture intended to represent the capital obligation; and
 4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.
- B.** Each document evidencing a capital obligation shall:
1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
 2. Have a maturity provision that either:
 - a. Gives the obligation a maturity of at least five years, or
 - b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to any obligation that otherwise meets all the requirements of this rule if the Superintendent determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.
 3. State expressly on its face that the obligation:
 - a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
 - b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
 4. Be unsecured.
 5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Superintendent's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.
 6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.
 7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.
- C.** No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Superintendent. The Superintendent may grant that authority in the initial order of approval or in a later order of approval.

Historical Note

Former Rule 7. R20-4-207 recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2).

R20-4-208. Repealed**Historical Note**

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Superintendent specifying the banking office it plans to close and the closing date. The bank shall ensure that the Superintendent receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

Historical Note

Former Rule 9. R20-4-209 recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4).

R20-4-210. Repealed**Historical Note**

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-211. Application for a Banking Permit

- A.** Before an application is filed, the representatives of the potential applicant shall meet with the Superintendent of Banks to discuss capitalization, location, and management of the proposed bank.
- B.** After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Superintendent prescribes. The applicant shall support the application with sufficient information to enable the Superintendent to make a determination.

Historical Note

Former Rule 11. R20-4-211 recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-212. Repealed**Historical Note**

Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-213. Repealed**Historical Note**

Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

R20-4-214. Preservation of Records

- A.** Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A bank may use an electronic recordkeeping system. The Department shall not require a bank to keep a written copy of its records if the bank can generate all information and copies required by this Section in a timely manner for examination or other purposes.
- B.** A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall

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have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).

C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in this Section.

1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.
2. "AC" means after closure.
3. "ACH" means automated clearing house.
4. "AE" means after expiration.
5. "ALC" means after last contact.
6. "AP" means after paid.
7. "ATD" means after termination date.
8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.
9. "FDIC" means the Federal Deposit Insurance Corporation.
10. "FHA" means the Federal Housing Administration.
11. "FHLMC" means the Federal Home Loan Mortgage Corporation.
12. "FNMA" means the Federal National Mortgage Association.
13. "GNMA" means the Government National Mortgage Association.
14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.
15. "M" means months.
16. "P" means the bank shall keep the record permanently.
17. "PMI" means private mortgage insurance.
18. "SAR" means a suspicious activity report required by the federal Bank Secrecy Act.
19. "TTL" means a treasury, tax, and loan account maintained by a bank.
20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.

D. Retention Schedule

1. Accounting and Auditing
 - a. Accrual and bond amortization 3
 - b. Audit report 6
 - c. Audit work papers 3
 - d. Bank call, income and dividend report 5
 - e. Bill, statement, or invoice - paid 7
 - f. Budget work papers 2
 - g. Collateral vault "in-and-out" ticket 1
 - h. Daily reserve computation 1
 - i. Earnings report 7
 - j. Expense voucher or invoice 7
 - k. Financial statement 7
 - l. Interoffice reconciliation 1
 - m. Interoffice transaction 1
 - n. Periodic statement for account owned by the bank 2
 - o. Reconciliation of deposits-due to bank 2
 - p. Reconciliation register-due from bank 2
 - q. Return and cash item register 1
 - r. Service contract 2

- s. Treasury tax and loan account 2
- t. Unclaimed property record 7
2. Administration
 - a. Articles of incorporation or association, bylaws, or other record of organization P
 - b. Bankers blanket bond-record showing compliance 5 AE
 - c. Bank examiner's report 7
 - d. Capital note issuance and transfer record P
 - e. Depreciation record-office equipment 3
 - f. Dividend check and register 7
 - g. Dividend check-outstanding P
 - h. Expired policy insuring the bank 3 AE
 - i. FDIC assessment base, record 5
 - j. FDIC certificate P
 - k. Insurance policy number, record of premium paid and amount recovered 3 AE
 - l. Legal proceedings when completed 5
 - m. Minute book of:
 - i. Meetings of the board of directors P
 - ii. Meetings of committees of the board of directors P
 - iii. Shareholders' meetings P
 - n. Postage meter record book (from date of final entry) 1
 - o. Real estate documentation 5 ATD
 - p. Report to directors 3
 - q. Stock issuance and transfer record P
 - r. Required report to supervisory agency 3
 - s. Tax controversy or proceeding when completed 7
 - t. Tax record not material to any controversy 7
 - u. Voting list and proxies 3
3. Collections
 - a. Collection payment record 1
 - b. Collection receipt-carbon 1
 - c. Collection register 1
 - d. Coupon cash letter-outgoing 1
 - e. Coupon envelope 1
 - f. Customer file copy 1
 - g. Incoming collection letter 1
 - h. Incoming contract or note letter 1
4. Customer service
 - a. Broker account holder-identification 5
 - b. Broker's confirmation 3
 - c. Broker's invoice 3
 - d. Broker's statement 3
 - e. E-Bond application 2
 - f. E-Bond sold or redeemed-record 2
 - g. E-Bond transmittal letter 2
 - h. Lock box daily receipts 1
 - i. Night depository agreement 1 AC
 - j. Night depository daily record 1
 - k. Safekeeping record and receipt 5
 - l. Securities buy order and sell order 3
5. Data processing (management information systems)
 - a. Back-up data (for reconstruction) daily, end of month, quarter, or year 1
 - b. Disaster recovery program P
 - c. Film copy of every IRS financial reporting form 6
 - d. Program change P
 - e. System, program and procedure manual P
6. Deposits
 - a. Account opened and account closed report 1
 - b. Certificate of deposit purchase record 7
 - c. Check paid, withdrawal slip, and other debits to account 7

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d. Club account check register	1	e. Armored car receipt	1
e. Club account coupon	1	f. Check book order	1
f. SAR - for suspicious transaction under \$10,000	5	g. Check book-receipt	1
g. CTR - for transaction exceeding \$10,000	5	h. Court order memorandum record	5
h. Customer authorization, resolution, and signature card	6 AC	i. Notice of Protest	1
i. Deposit account record needed to reconstruct	7	j. Travelers check-application	2
j. Deposit and other credits	7	k. Vault record-opening and closing	1
k. Dormant account – after closed or escheated	7 ALC	l. Wire transfer debit entry and credit entry	7
l. Form 1096, and 1099 reports to IRS	7	10. General ledger	
m. Individual retirement account record	7	a. Daily statement of condition	3
n. Interest check or other record of interest payment and reports	7	b. General journal-if byproduct of posting the general ledger	3
o. Internal management reports:		c. General journal-if used as book of original entry with description	3
i. Large balance	1	d. General ledger	5
ii. Overdraft	1	e. General ledger ticket-debit and credit	2
iii. Public funds	1	11. International department	
iv. Service charges	1	a. Broker account holder-identification	5
v. Stop payment	1	b. Cable copy	7
vi. Uncollected funds	1	c. Cable requisition	7
vii. Unposted item	1	d. Collection paid	1
viii. Zero balance	1	e. Correspondence	2
p. Ledger card	5 AC	f. Draft	7
q. Power of attorney document	7 ATD	g. Foreign collection register	6
r. Receipt for statement held at customer's request	1	h. Foreign draft application	6
s. Record showing compliance with the following federal regulations. The stated retention period applies unless, and until, it is preempted by federal law:		i. Foreign draft-carbon	2 ATD
i. Regulation CC, Expedited Funds Availability Act	2	j. Foreign exchange remittance sheet or book	6
ii. Regulation DD, Truth in Savings Act	2	k. Foreign financial account-record	7
iii. Regulation E, Electronic Funds Transfer Act	2	l. Foreign mail transfer application	6
t. Returned statement and cancelled checks	6	m. Foreign mail transfer-carbon	2 ATD
u. Statement	6	n. Foreign outstanding cash	2
v. Stop payment order	6 AE	o. Foreign payment-incoming	2
w. Document used to request and receive Tax Identification Number	6	p. Letter of credit application	2
x. Transaction journal	6	q. Letter of credit ledger sheet	7
y. Trial balance	6	r. Transfer outside of the United States in excess of \$10,000 – record	5
7. Due from banks		12. Investments	
a. Advice from correspondent bank	1	a. Bonds	
b. Bank statement	1	i. Amortization record	6
c. Draft-original	7	ii. Confirmation	3
d. Draft register or copy	1 AP	iii. Safekeeping receipt	2
e. Duplicate check-information and documentation pertaining to issuance	7	b. Broker's securities	
f. Reconciliation register	1	i. Broker's invoice	3
8. Due to banks		ii. Broker's statement	3
a. Account opened and account closed-reports	1	iii. Report of lost or stolen securities	3
b. Advice-copy	1	iv. Safekeeping advice	2
c. Incoming cash letter memo for credit	1	v. Taxpayer identification number	5
d. Incoming cash letter for remittance	1	c. Commercial paper	
e. Reconciliation register (TTL)	2	i. Broker's advice	2
f. Reconciliation verification	1	ii. Purchase order	2
g. Resolution	2 AC	iii. Remittance advice	2
h. Signature card	6 AC	d. Mortgage-backed securities	
i. Trial balance (fiche)	7	i. Buy-and-sell agreement	3
j. Undelivered statement, reconstruction available from bank records	1	ii. Commitment letter	7
k. Undelivered statement, reconstruction not possible	7	iii. FHLMC and FNMA loan file	7
9. General		iv. GNMA certificate	7
a. Address change order	1	v. Interest accrual record	7
b. Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check	1	vi. Monthly remittance report	7
c. Writ of attachment or garnishment	5	13. Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection.	
d. Attachment, release	5		

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This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.

- a. All Loans - general
 - i. Application for loan approved 6
 - ii. Appraisal 6
 - iii. Borrower's financial statement 6
 - iv. Charge-off record 10
 - v. Charged off note 10
 - vi. Collateral file 6
 - vii. Correspondence 6
 - viii. Credit file – all documentation 6
 - ix. Credit report 6
 - x. Daily proof and record 6
 - xi. Loan committee minutes P
 - xii. Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry 6
 - xiii. Other documentation for reconstruction of loan 2
- b. Commercial loans
 - i. Application for loan denied 12 M
 - ii. Bill of sale 6
 - iii. Borrowing resolution 3
 - iv. Business annual report (fiscal or year end) - after date of report 3
 - v. Business cash-flow analysis report - after date of report 3
 - vi. Business tax return - after date of return 6
 - vii. Commitment letter 6
 - viii. Copy of mortgage note or deed of trust 6
 - ix. Evidence of insurance 6
 - x. Guaranty 6
 - xi. Letter of credit 6
 - xii. Participation agreement 6
 - xiii. Promissory note 6
 - xiv. Purchase and sale agreement 6
 - xv. Security agreement 6
 - xvi. Title documentation 6
 - xvii. UCC filing 6
- c. Consumer loans
 - i. Application for loan denied, including adverse action notice 25 M
 - ii. Collateral record 6
 - iii. Hazard insurance record 6
 - iv. Invoice 6
 - v. Life and disability insurance record 6
 - vi. Overdraft loan agreement 6
 - vii. Promissory note and modification agreement - copy 6
 - viii. Title documentation 6
 - ix. UCC filing - copy 6
- d. Real estate loans
 - i. Assignment of escrow 6
 - ii. Assumption 6
 - iii. Commitment letter 6
 - iv. Copy of deed of trust or mortgage note, as it may have been modified 6
 - v. Escrow analysis and record 6
 - vi. Evidence of any FHA or PMI insurance required 6
 - vii. Hazard insurance life of loan
 - viii. Proof of insurance excluding hazard 6

- ix. Sales contract 6
- x. Settlement sheet 6
- xi. Survey 6
- xii. Title documentation 6
- e. Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:
 - i. Certificate of occupancy 6
 - ii. Construction progress report 6
 - iii. Contractor's cost breakdown 6
 - iv. Disbursement documentation 6
 - v. Inspection report 6
 - vi. Residential construction specifications and material list 6
- 14. Official checks and drafts
 - a. Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft 7
 - b. Bank draft 3
 - c. Cashier's check-cancelled 7
 - d. Cashier's check register-copy 7
 - e. Expense check-cancelled 7
 - f. Expense check register-copy 7
 - g. Expense voucher or invoice 7
 - h. Money order-bank or personal 7
 - i. Money order register-copy 7
 - j. Official check outstanding P
- 15. Personnel Records
 - a. Attendance record, and time card 3
 - b. Authorization for payroll deduction 2
 - c. Department of labor report 5
 - d. Disability record 5
 - e. Employee record and personnel folder 5
 - f. Employment application 3 AT
 - g. Insurance record 2
 - h. Payroll check 2
 - i. Pension fund record 10
 - j. Profit sharing fund record 10
 - k. Rejected employee application 2
 - l. Salary ledger or electronic data processing printout 4
 - m. Salary receipt 2
 - n. W-3 reconciliation of income tax withheld from wages 3
 - o. W-4 withholding exemption certificate 3
 - p. Wage and tax statement record (W-2) 7
 - q. Wage differential documentation (Fair Labor Standards Act) 3
- 16. Registered mail
 - a. Marine insurance book 3
 - b. Record of incoming and outgoing registered mail 1
 - c. Return receipt card 3
- 17. Safe deposit vault
 - a. Access ticket or card 6
 - b. Court order and correspondence 6
 - c. Delivery of will, burial plot deed, insurance policy-receipt 6
 - d. Forced entry record 6
 - e. Lease or contract-closed account 2 AC
 - f. Ledger record of account 1
 - g. Opened box contents-record and report 7
 - h. Rent receipt-copy 1
 - i. Sale to satisfy lien-record 7
 - j. Signature card, authorization, and resolution 6 AC
- 18. Tellers

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a.	Mail teller envelope	3 M	ii.	Personal property	3 AC
b.	Teller's balancing recap or recap book	1	e.	Asset delivery receipt	3 AC
c.	Teller's cash ticket-original and carbons	1	f.	Authorization	
d.	Teller's cash shipment record	1	i.	By co-fiduciary	P
e.	Teller's exchange ticket	1	ii.	By consultant	P
f.	Teller's machine tape	1	g.	Approval	
19.	Transit, proof, and clearing		i.	By co-fiduciary	P
a.	ACH entry	6	ii.	By consultant	P
b.	Advice of correction to deposit	2	h.	Broker's statement	7
c.	Clearinghouse settlement sheet - recapitulation of checks delivered to the clearinghouse or federal reserve	2	i.	Buy and sell order	7
d.	Record of items processed	6	j.	Cash documentation	
e.	Proof machine tape or other record	2	i.	Customer cash and asset statement	7
f.	Receipt for transit letter	1	ii.	Cash and security journal	7
g.	Return item letter	5	iii.	Cash trial balance	1
20.	Trust department administration		k.	Common trust fund annual report	10
a.	Appraisal of real or personal property held as a trust asset	3 AC	l.	Correspondence	
b.	Correspondence	3 AC	i.	Transfer letter	3 AC
c.	Decree or receipt and release	3 AC	ii.	Claim letter	3 AC
d.	Fee record and supporting data	3 AC	m.	Coupon collection record	7
e.	Intermediate and final account	3 AC	n.	Court accounting and petition	7
f.	Legal documentation including judgment, court order, and legal opinion	3 AC	o.	Daily transaction journal	6 M
g.	Paid bill	3 AP	p.	Debits and credits-daily	1
h.	Real estate insurance policy	1 AE	q.	Documentation necessary to support account decision	3 AC
i.	Real estate and mortgage document	3 AC	r.	Tax Documentation	
j.	Receipt for asset received or delivered	3 AC	i.	Federal estate tax return	10
k.	Record of asset tax cost	3 AC	ii.	State estate tax return	10
l.	Summary card, original instrument, agreement and amendment, and letters of appointment	3 AC	iii.	Tax-related work papers	10
m.	Synopsis sheet	3 AC	iv.	Federal gift tax return	10
21.	Corporate trust		s.	Fee calculations and supporting data	1
a.	Bond registration journal	3 AC	t.	Income tax return	
b.	Bond-cancelled	7	i.	Federal	3 AC
c.	Indemnity bond	P	ii.	State	3 AC
d.	Certification	2	u.	Inventory	3 AC
e.	Coupon envelope	6 M	v.	Investment review and related material	3 AC
f.	Coupon-cancelled	6 M	w.	Minutes	
g.	Customer receipt	7	i.	Investment committee	P
h.	Dividend and coupon record	3 AC	ii.	Trust committee	P
i.	Dividend and interest disbursement check and list	3 AC	23.	Other personal trust records	
j.	General ledger ticket	2	a.	Legal opinion	3 AC
k.	Legal paper	P	b.	Correspondence related to legal opinion	3 AC
l.	Copy of cancelled stock certificate, original returned to customer	1	c.	Paid bill	7
m.	Stock registration journal	3 AC	d.	Review and recommendation	3 AC
n.	Stock transfer memo	1	e.	Safekeeping record and receipt	3 AC
o.	Stock transfer receipt	1	f.	Security ledger sheet	P
p.	Tax return	3 AC	g.	Trust check	10
q.	Transfer-supporting papers	3 AC	h.	Trust entry-original	3 AC
r.	Transfer journal	3 AC	i.	Trust or agency agreement-original	3 AC
s.	Transfer tax waiver	3 AC	j.	Vault withdrawal and deposit ticket	7
t.	Trust ledger-corporate	7	k.	Will-certified copy	P
22.	Personal trust		l.	Work papers supporting tax return	7
a.	Record of previously discharged fiduciary		24.	Trust Investments	
i.	Accounting	3 AC	a.	Annual report	
ii.	Decree	3 AC	i.	Common trust fund	10
iii.	Receipt and release	3 AC	ii.	Pooled fund	10
b.	Accounting - recorded	3 AC	b.	Valuation	
c.	Advice of payment - securities department regarding bond and coupon collection	3 AC	i.	Common trust fund	10
d.	Appraisal		ii.	Pooled fund	10
i.	Real property	3 AC	c.	Minutes	
			i.	Investment committee	P
			ii.	Administrative committee	P
			d.	Investment order and broker's confirmation	3 AC
			e.	investment review and related material	3 AC
			f.	Correspondence	3 AC
			g.	Summary of annual account activity	3 AC
			25.	Wire transfer	

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- | | |
|--------------------------|---|
| a. Incoming wire log | 1 |
| b. Outgoing wire log | 1 |
| c. Transmission record | 7 |
| d. Wire transfer request | 7 |

Historical Note

Former Rule 14. R20-4-214 recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3). Missing notation in subsection (D)(1)(j) corrected as proposed at 7 A.A.R. 2491 (Supp. 20-1).

R20-4-215. Trust Business

All banks authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215 recodified from R4-4-215 (Supp. 95-1).

ARTICLE 3. EXPIRED**R20-4-301. Expired****Historical Note**

Former Rule 1. R20-4-301 recodified from R4-4-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-302. Repealed**Historical Note**

Former Rule 2; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-302 recodified from R4-4-302 (Supp. 95-1).

R20-4-303. Expired**Historical Note**

Former Rule 3. R20-4-303 recodified from R4-4-303 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-304. Expired**Historical Note**

Former Rule 4. R20-4-304 recodified from R4-4-304 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-305. Repealed**Historical Note**

Former Rule 5. R20-4-305 recodified from R4-4-305 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-306. Repealed**Historical Note**

Former Rule 6. R20-4-306 recodified from R4-4-306 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-307. Repealed**Historical Note**

Former Rule 7. R20-4-307 recodified from R4-4-307 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-308. Repealed**Historical Note**

Former Rule 8. R20-4-308 recodified from R4-4-308 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-309. Expired**Historical Note**

Former Rule 9. R20-4-309 recodified from R4-4-309 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-310. Reserved**R20-4-311. Repealed****Historical Note**

Former Rule 11; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-311 recodified from R4-4-311 (Supp. 95-1).

R20-4-312. Repealed**Historical Note**

Former Rule 12. R20-4-312 recodified from R4-4-312 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-313. Reserved**R20-4-314. Repealed****Historical Note**

Former Rule 14. R20-4-314 recodified from R4-4-314 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-315. Repealed**Historical Note**

Former Rule 15. R20-4-315 recodified from R4-4-315 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-316. Repealed**Historical Note**

Former Rule 16. R20-4-316 recodified from R4-4-316 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-317. Repealed**Historical Note**

Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Expired**Historical Note**

Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-319. Repealed**Historical Note**

Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed

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Historical Note

Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed**Historical Note**

Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed**Historical Note**

Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed**Historical Note**

Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Expired**Historical Note**

Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-325. Expired**Historical Note**

Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-326. Expired**Historical Note**

Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-327. Expired**Historical Note**

Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-328. Expired**Historical Note**

Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-329. Repealed**Historical Note**

Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. Expired**Historical Note**

Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-331. Repealed**Historical Note**

Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

ARTICLE 4. CREDIT UNIONS**R20-4-401. Fidelity Bond Coverage**

- A.** A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.
- B.** A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.
- C.** A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Arizona Director of Insurance to transact surety business in Arizona.

Historical Note

Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2).

R20-4-402. Repealed**Historical Note**

Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. SMALL LOANS**R20-4-501. Repealed****Historical Note**

Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed**Historical Note**

Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month long. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note

Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-504. Repealed**Historical Note**

Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed

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Historical Note

Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed**Historical Note**

Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed**Historical Note**

Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full

If a borrower repays a loan before the due date of the final installment, a licensee shall calculate any refund or credit due on the pre-computed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note

Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4).

R20-4-509. Repealed**Historical Note**

Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed**Historical Note**

Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed**Historical Note**

Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved**R20-4-513. Repealed****Historical Note**

Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed**Historical Note**

Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed**Historical Note**

Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed**Historical Note**

Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed**Historical Note**

Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

- A. A licensee may collect a deferral fee at the time it agrees to a deferral or at any time after the assessment of a deferral fee. If a licensee receives a payment when it agrees to the deferral, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.
- B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note

Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-519. Deferral Statement

A licensee shall give the borrower a statement at the time a deferral is made, and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-520. Repealed**Historical Note**

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed**Historical Note**

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed

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Historical Note

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed**Historical Note**

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

- A.** A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
- B.** A licensee shall keep its books, accounts, and records of operations licensed under A.R.S. Title 6, Chapter 5 separate from the books, accounts, and records of its other business activities.
- C.** In addition to any statutory requirements, the books, accounts, and records maintained by a Small Loan Company shall include the following:
1. A file containing a record of all legal actions brought during the fiscal year. A licensee shall keep the file until the Department of Financial Institutions conducts its examination of the licensee.
 2. An itemized record of disbursing the proceeds of each loan. The itemized record shall include the amount of refund on each loan that is renewed or refinanced if the licensee makes precomputed loans.
 3. A record of the receipt of all allowable fees.
 4. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan.
 5. A record of the borrower's voluntary election to purchase any insurance in connection with a loan, if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-525. Repealed**Historical Note**

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed**Historical Note**

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed**Historical Note**

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed**Historical Note**

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed**Historical Note**

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed**Historical Note**

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed**Historical Note**

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed**Historical Note**

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved**R20-4-534. Insurance**

- A.** A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF \$ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.

- B.** A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF \$ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF \$ _____.

I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF \$ _____.

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Historical Note

Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-535. Reserved**R20-4-536. Repealed****Historical Note**

Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed**Historical Note**

Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

- A.** An applicant for a debt management company license shall send the Department an application on the form required by the Superintendent. The Department shall order a credit report from a local credit reporting agency disclosing the credit history of the applicant's principals or managing agents. The Department shall direct the credit reporting agency to send the credit report directly to the Superintendent. The applicant shall pay the cost of obtaining the credit report. A complete application shall include the credit report required by this Section and all of the following:
1. The surety bond required by A.R.S. § 6-704(B);
 2. The fidelity bond required by A.R.S. § 6-704(D);
 3. The nonrefundable application fee and original license fee described in A.R.S. § 6-706, and specified in A.R.S. § 6-126(A)(14);
 4. A sample of the contract intended to be used by the applicant;
 5. Current financial statements as described in R20-4-604(A)(5);
 6. A certified copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity; and
 7. Statements of personal history, on the form required by the Superintendent, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.
- B.** A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Superintendent.
- C.** A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Superintendent. A debt management company shall apply separately to renew the license of each authorized business location. With each application for renewal, a debt management company shall

include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(C)(2).

- D.** The Department may require additional information the Superintendent considers necessary in connection with an application under this Section.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-603. Reports

- A.** Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Superintendent. A debt management company shall deliver its report to the Department on or before August 15.
- B.** Each debt management company organized as a corporation shall send the Department a copy, date-stamped by the Arizona Corporation Commission, of each annual report and certificate of disclosure filed under the authority of A.R.S. § 10-202 or 10-1622 within ten days of filing the report and certificate with the Arizona Corporation Commission.
- C.** Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within ten days of the change.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-603 recodified from R4-4-603 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-604. Records

- A.** A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable record of all its business activity. A debt management company may use an electronic recordkeeping system. The Department shall not require a debt management company to keep a written copy of its books, accounts, and records if the debt management company can generate all information and documentation required by this Section within three days of the Department's request for production of the records for examination or other purposes. A debt management company's books, accounts, and records shall include:
1. A file for each account containing:
 - a. A copy of all correspondence concerning the account;
 - b. Evidence of the notice given to creditors of the debt management contract;
 - c. A subsidiary ledger disclosing all financial transactions concerning the account;
 - d. A copy of each written statement of account given to the debtor;
 - e. The original budget analysis required under R20-4-607; and
 - f. The original contract between the debt management company and the debtor, including all amendments.
 2. A trust account general ledger, kept current daily, that reflects each deposit to and disbursement from the trust account.
 3. Each reconciliation of the debt management company's trust account, prepared at least once a month.

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4. A general ledger, kept current monthly, that reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Superintendent, that reflects the financial condition of the debt management company. The financial statement shall include:
 - a. A balance sheet,
 - b. A statement of income and retained earnings,
 - c. A statement of changes in financial condition, and
 - d. Appropriate footnotes that either:
 - i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
 - ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
 - iii. Contain other disclosures required by generally accepted accounting principles.
6. A record of all pending litigation naming the debt management company as a party. The debt management company shall keep, during the pendency of each case, a copy of the complaint, and a copy of any answer or motion filed by the debt management company in response to the complaint.

- B. All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:
 1. Makes the records available to the Superintendent, for examination or other purposes, in this state not more than three business days after demand; and
 2. Allows its debtor customers to call toll free to obtain information from the records that is not available from the debt management company's office in Arizona.
- C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-604 recodified from R4-4-604 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-605. Reserved**R20-4-606. Reserved****R20-4-607. Budget Analysis**

- A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.
- B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.
- C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays its reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-607 recodified from R4-4-607 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-608. Reserved**R20-4-609. Repealed****Historical Note**

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-609 recodified from R4-4-609 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-610. Repealed**Historical Note**

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-610 recodified from R4-4-610 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-611. Advertising

- A. A debt management company shall send the Department copies of all advertising, communication, or sales material at least five days before the company uses the advertising, communication, or sales material to promote the sale of the company's services. This requirement applies to every type of promotional material used, whether the company will publish, exhibit, broadcast, or personally distribute the material by any other method or medium.
- B. A debt management company shall not use advertising, communication, or sales material that contains:
 1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the statement does not state a material fact necessary to make the statement true, in light of the circumstances under which it is made;
 2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
 3. A schedule of payments in any form.
- C. A debt management company's advertising, communication, and sales material shall contain:
 1. The name of the debt management company exactly as it appears on the current license; and
 2. The following legend, conspicuously displayed in at least 12 point type and in bold print: "NOT A LOAN COMPANY."
- D. The Department's failure to object to the advertising, communication, or sales material filed with it is not and shall not be represented as an approval of the material or the statements it contains.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-611 recodified from R4-4-611 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

R20-4-612. Solvency and Minimum Liquid Assets

- A. A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).
- B. To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by \$2,500.00 the total of all its current business

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liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.

- C. Except as otherwise provided by this Section, or in a specific ruling by the Superintendent, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-612 recodified from R4-4-612 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

- R20-4-613. Reserved**
R20-4-614. Reserved
R20-4-615. Reserved
R20-4-616. Reserved
R20-4-617. Reserved
R20-4-618. Reserved
R20-4-619. Reserved
R20-4-620. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-620 recodified from R4-4-620 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

ARTICLE 7. ESCROW AGENTS**R20-4-701. Change in Location of Business**

An escrow agent shall mail the Superintendent written notice of any change in the location of the escrow agent's business. The escrow agent shall ensure that the Superintendent receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall mail the fee required by A.R.S. § 6-126(A), together with the current escrow license, to the Superintendent with the notice of the location change. The Superintendent shall change the submitted license to reflect the new business location and return it to the escrow agent.

Historical Note

Former Rule 1. R20-4-701 recodified from R4-4-701 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-702. Account Practices and Records

An escrow agent shall maintain records to enable the Superintendent to reconstruct the details of each escrow transaction. The records shall include the following:

1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

Historical Note

Former Rule 2. R20-4-702 recodified from R4-4-702 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-703. Preservation of Records

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may use an electronic recordkeeping system. The Department shall not require an escrow agent to keep a written copy of the records, books, and accounts if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 in a timely manner for examination or other purposes.

Historical Note

Former Rule 3. R20-4-703 recodified from R4-4-703 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-704. Subsidiary Account Records

An escrow agent shall maintain subsidiary account records that identify the funds deposited in each escrow. The total of all credit balances in the subsidiary accounts shall always equal the balance of the general ledger control account.

Historical Note

Former Rule 4. R20-4-704 recodified from R4-4-704 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-705. Reserved**R20-4-706. Repealed****Historical Note**

Former Rule 6. R20-4-706 recodified from R4-4-706 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-707. Expired**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). R20-4-707 recodified from R4-4-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 411, effective September 30, 2014 (Supp. 15-1).

R20-4-708. Financial Condition and Resources

The Superintendent shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth,
2. Amount of tangible net worth,
3. Amount of liquid assets,
4. Amount of cash provided by operations,
5. Ratio of debt to net worth,
6. Owner's personal financial resources,
7. Outside resources available,
8. Profitability,
9. Projected operating results,
10. Status as agent for a title insurance company, and
11. Sources of new business.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

ARTICLE 8. TRUST COMPANIES**R20-4-801. Definitions**

In this Article, unless the context otherwise requires:

"Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

"Affiliate" has the meaning stated at A.R.S. § 6-801.

"Certificate" has the meaning stated at A.R.S. § 6-851.

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“Fiduciary” has the meaning stated at A.R.S. § 6-851.

“Governing instrument” means a document, and all its operative amendments, that:

- Creates a trust and regulates the trustee’s conduct,
- Creates an agency relationship between a trust department or trust company and a client, or
- Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

“Investment responsibility” means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

“Person” has the meaning stated at A.R.S. § 1-215.

“Superintendent” has the meaning stated at A.R.S. § 6-851.

“Trust asset” means any property or property right held by a trust department or trust company for the benefit of another.

“Trust business” has the meaning stated at A.R.S. § 6-851.

“Trust company” has the meaning stated at A.R.S. § 6-851.

“Trust department” means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

“Trust funds” means any money held by a trust department or trust company for the benefit of another.

“Trustor” means a person who creates or funds a trust, or both.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-801 recodified from R4-4-801 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-802. Reserved

R20-4-803. Reserved

R20-4-804. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-804 recodified from R4-4-804 (Supp. 95-1). Repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

R20-4-805. Reports

- A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Superintendent on the form prescribed by the Superintendent. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by R20-4-812(E) through R20-4-812(G).
- B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Superintendent within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Superintendent, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.
- C. Each trust company shall notify the Superintendent of any change in the directors or officers of the company within 10

days of the change. Any trust company with more than 25 officers may, after obtaining the Superintendent’s written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company’s corporate operations or in the trust company’s trust business in this state.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-805 recodified from R4-4-805 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-806. Records

- A. A trust company may use a computer recordkeeping system if the trust company gives the Superintendent advanced written notice that it intends to do so. Except for records required by subsections (B)(1)(a) and (B)(1)(b), the Department shall not require a trust company to keep a written copy of its records if the trust company can generate all information required by this Section in a timely manner for examination or other purposes. A trust company may add, delete, modify, or customize a computer recordkeeping system’s hardware or software components. When requested, or in response to a written notice of an examination, a trust company shall report to the Superintendent any alteration in the computer recordkeeping system’s fundamental character, medium, or function if the alteration changes the computer system to a paper-based system.
- B. A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:
 1. A file for each account that includes:
 - a. The original of the governing instrument,
 - b. The originals of all contracts and other legal documents,
 - c. Copies of all correspondence,
 - d. Accounting records disclosing all the financial transactions, and
 - e. A listing of all the account’s assets and liabilities.
 2. An investment file for each account that includes:
 - a. All original documentary evidence of the account’s assets; or
 - b. Copies of the original documentary evidence of the account’s assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
 - c. A record of the initial and annual investment reviews for the account.
 3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department’s or trust company’s trust business;
 4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when directed by the Superintendent. The financial statements shall include at least:
 - a. A balance sheet; and
 - b. A statement of income, expenses, and retained earnings.
 5. Adequate records of all pending litigation that names the trust department or trust company as a party.
- C. A trust department shall keep its fiduciary records separate and distinct from the trust department’s corporate records.

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- D.** A trust department or trust company shall keep records described in subsections (B)(1) and (B)(2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (B)(2), for three years after the litigation is resolved.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-806 recodified from R4-4-806 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Superintendent determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-807 recodified from R4-4-807 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-808. Administration of Fiduciary Powers

- A.** The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.
- B.** A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for any account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.

- C.** A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-808 recodified from R4-4-808 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information of the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
 - a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
 - b. The governing instrument provides otherwise; or
 - c. A different frequency is established by a lawful course of dealing before the effective date of this rule; and
4. Comply with all lawful provisions of the governing instrument.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-809 recodified from R4-4-809 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-810. Funds Awaiting Investment or Distribution

- A.** Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.
- B.** A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company, unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
 2. Any other obligations fully guaranteed by the United States government as to principal and interest;
 3. Obligations of a Federal Reserve Bank;
 4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
 5. Readily marketable securities that either:

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- a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
 - b. Satisfy state pledging requirements under A.R.S. § 6-245(C).
- C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-810 recodified from R4-4-810 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-811. Investment of Trust Funds

- A. A trust department or trust company shall invest trust funds according to:
- 1. The governing instrument; and
 - 2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7601 through 14-7611.
- B. A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-811 recodified from R4-4-811 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-812. Self-dealing

- A. A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
- 1. Its own securities;
 - 2. Other types of property acquired from the trust department or trust company;
 - 3. Property acquired from the trust department's or trust company's directors, officers, or employees;
 - 4. Property acquired from the trust department's or trust company's affiliates;
 - 5. Property acquired from its affiliates' directors, officers, or employees; or
 - 6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- B. A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
- 1. If the trust department or trust company has authority under subsection (A), and
 - 2. If those securities are offered pro rata to all stockholders of the trust department or trust company.
- C. A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
- 1. Its directors, officers, or employees;
 - 2. Its affiliates;
 - 3. Its affiliates' directors, officers, or employees; or

- 4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.
- D. However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
- 1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
 - a. The proposed sale or loan avoids the contingent or potential liability;
 - b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
 - c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
 - d. The affected account is reimbursed, in cash, at no loss to that account; or
 - 2. The Superintendent requires or approves, in writing, the sale or loan to otherwise prohibited parties.
- E. A trust department or trust company may sell trust property held in one account to another of its accounts if:
- 1. The transaction is fair to both accounts; and
 - 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- F. A trust department or trust company may loan trust property held in one account to another of its accounts if:
- 1. The transaction is fair to both accounts; and
 - 2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.
- G. A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
- 1. The transaction is fair to the borrowing account; and
 - 2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-812 recodified from R4-4-812 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-813. Custody of Investments

- A. A trust department or trust company shall keep each account's investments separate from its own assets. It shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
- 1. The trust department's or trust company's board of directors, or
 - 2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.
- B. A trust department or trust company shall either:
- 1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
 - 2. Adequately identify each account's property in the trust department's or trust company's records.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-813 recodified from R4-4-813 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000

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(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-814. Compensation

- A.** A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. It shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.
- B.** A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-814 recodified from R4-4-814 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-815. Collective Investments

- A.** All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871, and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust company shall not establish a common trust fund unless it first:
1. Prepares a written plan regarding the common trust fund; and
 2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.
- B.** The plan shall describe the common trust fund's operational details, including a description of:
1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
 2. The manner for allocating the common trust fund's income and losses,
 3. The criteria for admission to or withdrawal from participating in the common trust fund, and
 4. The method for valuing assets in the common trust fund and the frequency of valuation.
- C.** A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.
- D.** The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-815 recodified from R4-4-815 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

- A.** Any trust department that wants to surrender its trust powers shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superin-

tendent concludes that the trust department has no remaining fiduciary duties, the Superintendent shall notify the trust department that it no longer has authority to exercise trust powers.

- B.** Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Superintendent shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.
- C.** After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Superintendent's supervision shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust company has no further fiduciary duties, the Superintendent shall notify the trust company that it no longer has authority to exercise fiduciary powers.
- D.** Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2).

Appendix A. Repealed**Historical Note**

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed**Historical Note**

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS**R20-4-901. Reserved****Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A.** The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as

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defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

- B.** The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
 2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

- A.** An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
 2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
 3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
 4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
 5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;
 6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
 7. Attorney certified by any state as a real estate specialist.
- B.** An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full

month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage broker or mortgage banker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

- A.** A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 24 hours of class, and
 2. Received a passing grade on the final exam.
- B.** A course of study shall meet all the following requirements:
1. The following items shall be submitted by the school to the Superintendent on an annual basis:
 - a. Course materials;
 - b. Class content outlines on a session-by-session basis; and
 - c. Sample final exam.
 2. The following subjects shall be taught:
 - a. Mortgage, deed of trust, and security agreement law;
 - b. Negotiable instrument law;
 - c. Mortgage broker law;
 - d. Escrow agent law;
 - e. Recordkeeping requirements of R20-4-917;
 - f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
 - g. Ethics;
 - h. Principal and agent law;

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- i. Arithmetical computations common to mortgage brokerage;
 - j. Real estate lending principles;
 - k. Real estate law;
 - l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
 - m. Securities law.
3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.

- C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the license under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative

If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address

If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

- A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

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1. Any approved computer or mechanical system back to a paper-based system;
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied, etc.); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose, including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose, including identification of a related loan, if any;
 4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
 6. A file for each application for a mortgage loan containing:
 - a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
 - g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
 - h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
 7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
 8. Copies of governmental or regulatory compliance reviews;
 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.
- E.** A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed

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Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker

All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

- A.** No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.
- B.** In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.
- C.** The Superintendent may remove any member of the committee at any time without cause.
- D.** The committee shall review and revise questions on the test not less than once every two years. All questions used on the test shall first be submitted to and approved by the Superintendent.
- E.** The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.
- F.** The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECI-

FIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

- A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.
- B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).
- C. The licensee seeking conversion shall submit:
 - 1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
 - 2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

- A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of \$300.
- B. A person holding a certificate of exemption shall pay a renewal fee of \$150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus \$25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).
- C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).
- D. The following fees are payable to the Department:
 - 1. To change the name of the federally chartered savings bank on a certificate of exemption: \$250.00.
 - 2. To change the responsible individual for the exempt entity: \$250.00.
 - 3. To issue a duplicate or replace a lost certificate of exemption: \$100.00.
 - 4. To change the address of the federally chartered savings bank on a certificate of exemption: \$50.00.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE**R20-4-1001. Notice of Change of Location of Safe Deposit Repository**

- A. A corporation or association that moves a repository shall give written notice of the location change to the Superintendent and to its customers.
 - 1. A corporation or association shall provide notice of the location change to the Superintendent by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
 - 2. A corporation or association shall provide notice of the location change to its customers by:
 - a. Publishing notice of the change of location in:
 - i. An English language newspaper of general circulation in the county where the repository will be closed,
 - ii. In a weekly newspaper for two consecutive publications, or
 - iii. In a daily newspaper for three consecutive days; and
 - b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.
- B. The corporation or association shall include all the following information in the notice:
 - 1. The date the corporation or association intends to move the repository,
 - 2. The earliest date a customer can remove contents and transact other business related to the move,
 - 3. The latest date a customer can remove contents and transact other business related to the move,
 - 4. The street address of the repository to be closed, and
 - 5. The street address of the new repository.

Historical Note

Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES**R20-4-1101. Capital structure of banks; defined**

"Capital structure" as the term is applied to banks under Article 2, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution's report of condition required by the supervisory banking authority for the year end next preceding the institution's bid for deposit:

- 1. Reserve for bad debt losses on loans.
- 2. Other reserves on loans.
- 3. Reserves on securities.
- 4. Capital notes and debentures.
- 5. Preferred stock -- total par value.
- 6. Common stock -- total par value.
- 7. Surplus.
- 8. Undivided profits.
- 9. Reserve for contingencies and other capital reserves.

Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1).

R20-4-1102. Expired

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Historical Note

Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 5, 2020 (Supp. 20-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT**R20-4-1201. Scope of Article**

This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings' procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in state statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings' rules. This Article does not apply to rulemaking or to investigative proceedings before the Superintendent.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1202. Definitions

In this Article, unless the context otherwise requires:

“Administrative law judge” has the meaning stated at A.R.S. § 41-1092(1).

“Appealable agency action” has the meaning stated at A.R.S. § 41-1092 3).

“Contested case” has the meaning stated at A.R.S. § 41-1001(4).

“Department” means the Arizona State Department of Financial Institutions.

“License” has the meaning stated at A.R.S. § 41-1001(10).

“Party” means:

- The Department;
- The Superintendent;
- Each person either named or admitted as a party, and
- Each person properly seeking, and entitled, to be a party.

“Superintendent” has the meaning stated in A.R.S. § 6-101(16).

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1203. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

A. A person shall either personally deliver all papers permitted or required to be filed with the Superintendent or shall mail them by first class, certified, or express mail, or send them by facsimile transmission (602-381-1225), to the Superintendent at

2910 N. 44th Street, Suite 310, Phoenix, AZ 85018-7270, or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the Superintendent's address stated in this subsection.

B. A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party's attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresented party by service on the actual party.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4).

R20-4-1205. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Commencement of Proceedings; Notice of Hearing

A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law.

1. A letter or order granting or denying a license;
2. A license issued with restrictions or conditions;
3. A cease and desist order;
4. An order to remedy unsafe or unsound conditions;
5. An order to remedy an impairment of capital;
6. An order taking possession and control of a financial institution or enterprise;
7. An order assessing a fine;
8. Any other order or matter reviewable in a hearing either under the authority of these rules, a statute or an administrative rule enforced by the Superintendent, or by the order's express terms.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1209. Answer to Notice of Hearing

A. The Superintendent may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of

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hearing. Any party to the proceeding may file an answer without being directed to do so.

- B.** A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Superintendent may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.
- C.** An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions in the notice of hearing. An answering party that does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an assertion shall state that inability in its answer. That statement shall have the effect of a denial. A party admits each assertion that it does not deny. An answering party that intends to deny only a part or a qualification of an assertion, or to qualify an assertion, shall expressly admit as much of that assertion as is true and shall deny the remainder.
- D.** A party that fails to file an answer required by this Section within the time allowed is in default. The Superintendent may resolve the proceeding against a defaulting party. In doing so, the Superintendent may regard any assertions in the notice of hearing as admitted by the defaulting party.
- E.** An answering party waives all defenses not raised in its answer.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1210. Stays

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Superintendent stay an action or any part of an order that will become effective before the Department can hold a hearing. The Superintendent may, in the Superintendent's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Superintendent grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1211. Intervention

A person may only intervene in a proceeding if the person timely applies and:

1. A statute confers a right to intervene, or
2. The person's claim or defense shares a question of law or fact in common with the main proceeding.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended

by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1212. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Rehearing

- A.** Except as provided in subsection (H), any party in a contested case who is aggrieved by a decision rendered in that case may file with the Superintendent, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for rehearing.
- B.** A party requesting rehearing under this Section may amend a motion for rehearing at any time before the Superintendent rules on the motion. Any other party, or the Attorney General, may file a response to the motion for rehearing within 15 days after service of the motion for rehearing, or the amended motion for rehearing. The Superintendent may require a writ-

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ten brief of the issues raised in the motion and may allow oral argument.

- C. The Superintendent may grant a motion for rehearing for any of the following causes:
1. Irregularity in the proceedings before the Superintendent, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Superintendent, the Superintendent employees, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary care;
 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing;
 7. The decision is not justified by the evidence or is contrary to law.
- D. The Superintendent may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (C). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.
- E. The Superintendent, within the time for filing a motion for rehearing, may without a motion order a rehearing or review of a decision for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.
- F. After giving the parties notice and an opportunity to be heard on the matter, the Superintendent may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.
- G. When a motion for rehearing is based on an affidavit, the moving party shall serve the affidavit with the motion. An opposing party or the Attorney General may serve opposing affidavits within 10 days after service of the motion for rehearing.
- H. The Superintendent may issue a final decision, subject only to judicial review, and without an opportunity for rehearing or administrative review if the Superintendent includes in the decision:
1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and
 2. An express finding that a rehearing or review is:
 - a. Impossible,
 - b. Unnecessary, or
 - c. Contrary to the public interest.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1220. Consent Agreements

- A. The Department will enter into a consent agreement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the Superintendent or the jurisdiction of the tribunal that will enter the judgment or order.

- B. A refusal to admit allegations is a denial. However, a defendant or respondent may consent to a judgment or order reciting that it does not admit or deny the allegations except those required by subsection (A). A consent agreement shall contain those additional provisions required by the Superintendent in a given matter, and may include:
1. Waiving any right to seek judicial review challenging the judgment's or order's validity,
 2. Waiving findings of fact and conclusions of law,
 3. Stating that the agreement is signed only to settle the matter and not as an admission that the defendant or respondent has violated the law.
- C. The Superintendent has sole discretion to decide whether to resolve a matter by consent agreement. Nothing in this Section gives the Superintendent a duty to approve a consent agreement in any matter.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

ARTICLE 13. LOAN ORIGINATORS**R20-4-1301. Scope of Article**

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1302. Course of Study to Qualify for Licensure

- A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensure System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensure Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
 2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensure Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).
- C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;

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3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
 5. The remaining eight hours should be comprised of instruction in:
 - a. The obligations between principal and agent;
 - b. The statutory and regulatory laws governing loan originators;
 - c. Arithmetical computations common to mortgage lending;
 - d. Principles of real estate lending;
 - e. The purpose and effect of mortgages, deeds of trust, and security agreements;
 - f. The terms and conditions of conforming and non-conforming residential mortgages;
 - g. Real estate appraisal; and
 - h. The principles of appraisal independence.
- D.** A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act (“RESPA”), the Truth in Lending Act (“TILA”), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act (“ECOA”) and the Fair Credit Reporting Act (“FCRA”): Three hours;
 2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
 3. Non-traditional mortgage product lending standards: Two hours;
 4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401,

effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1304. Fees

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): \$350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): \$150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): \$50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): \$25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

ARTICLE 14. INVESTIGATIONS**R20-4-1401. Definitions**

In this Article, unless the context otherwise requires:

1. “Examination” means reviewing an applicant’s or licensee’s operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. “Investigation” means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity’s operations, books, and records, conducted by the Superintendent for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. “Licensee” means a financial institution or enterprise.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective

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August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4-4-1401 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1402. Repealed**Historical Note**

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent's Subpoena Power

The Superintendent may serve a subpoena either by personal delivery or by first class, certified, or express mail, or by facsimile transmission. A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Superintendent. The Superintendent may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Superintendent may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403 renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1404. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Fingerprints; Background Information

- A.** In connection with an examination or investigation, the Superintendent may investigate the following persons' background:
1. An applicant or a licensee, or a person whom the Superintendent reasonably believes may be violating any statute or rule administered by the Superintendent; and
 2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).
- B.** In connection with an examination or investigation, the Superintendent may require a person described in A.R.S. § 6-123.01(A) or (E) to submit a statement of personal history and fingerprints to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1406. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991 (Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1).

R20-4-1409. Renumbered**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed**Historical Note**

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES**R20-4-1501. Definitions**

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(A)(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Superintendent" has the meaning in A.R.S. § 6-101.

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Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1502. Applications

- A.** An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Superintendent, together with the following documents and payment:
1. The bond required by A.R.S. § 32-1021;
 2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
 3. A current financial statement in the form required by the Department;
 4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
 5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.
- B.** An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
 2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.
- C.** A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Superintendent before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.
- D.** An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Superintendent within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
1. A bond that satisfies the requirements of A.R.S. § 32-1022;
 2. A current financial statement as required by the Department;
 3. A detailed description of the facts justifying the issuance of a provisional license; and
 4. Evidence that the licensee notified the Superintendent as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.
- E.** An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;

2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;
 3. A licensee shall complete and file an application if an active manager's employment was terminated.
- F.** An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."
- G.** The Superintendent may require additional information the Superintendent considers necessary in connection with any application under this rule.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1503. Reports

- A.** A collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than ten days after the change. With the notice, the collection agency shall provide the Superintendent with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.
- B.** A collection agency shall notify the Superintendent in writing of any change in its place of business not more than 10 days after the change.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1504. Records

- A.** A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;
- B.** All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:
1. Records or books of account listing all clients' accounts in numerical order, or in alphabetical order according to the clients' names. If a collection agency keeps books of accounting in numerical order, the collection agency shall alphabetically cross-index each client name with the corresponding account's number. Each account shall reflect its true condition at each calendar month's end, and shall include:
 - a. The client's name and address;
 - b. Each debtor's name worked for collection in that month;
 - c. The amount, description, and date of each debit and each credit to the account; and
 - d. The balance due to, or owing from, the client.

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2. A record and history of each debt for collection that clearly shows:
 - a. The debtor's name;
 - b. The debt's principal amount;
 - c. The interest charged or collected;
 - d. The amount, and a description of any other charges;
 - e. The amount, and date, of each payment received or collected; and
 - f. The current balance due on the debt.
 3. An original of each written contract, between the licensee and a client, including any contract amendments.
 4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Superintendent.
 5. The licensee's trust account reconciliation, prepared at least once a month.
 6. Books, records, and files maintained so that the Superintendent can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
 7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
 8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.
- C.** A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.
- D.** A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the records.
- E.** A licensee shall retain the records required by this Section for the following periods:
1. A licensee shall retain all records described in subsections (B)(1), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), and (B)(8) for at least six years following their creation.
 2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1505. Trust Account

- A.** A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account with an Arizona bank or savings and loan association. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a depository in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:
1. Paid over to a client, or
 2. Otherwise paid as provided in this Section.

- B.** A licensee shall pay funds from the trust account either:
1. By prenumbered printed checks, or
 2. By electronic payment.
- C.** A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.
- D.** A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-317, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.
- E.** A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.
- F.** A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
 2. Expressly authorized in its contract with a client, or
 3. Authorized in writing by the Superintendent.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

- A.** A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
 2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
- B.** A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C.** A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1507. Representations of Collection Agency's Identity

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In all communications with debtors, either orally or in writing, all the following rules apply:

1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency.
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1508. Representations of the Law

A collection agency shall not:

1. Misrepresent the state of the law to a debtor,
2. Send a debtor written material that simulates legal process, or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

- A. A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.
- B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
- C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
- D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
- E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1509 recodified from R4-4-1509 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1510. Representations as to Rights Waived or Remedies Available

- A. A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.

- B. A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process.
- C. A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1511. Prohibition of Harassment

- A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.
- B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.
- C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.
- D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.
- E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1512. Contacts with Debtors and Others

- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not contact a third party, including a debtor's friend, relative, neighbor, or employer and:
 1. Inform the third party of the debt;
 2. Ask the third party to pressure the debtor into paying the debt, or;
 3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
- D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1513. Cessation of Communication with the Debtor

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- A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or;
 2. Wants the collection agency to stop all further communication with the debtor.
- C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
1. The collection agency has stopped trying to collect the debt, or
 2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
- D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1514. Disclosure of Information to Debtor

- A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to inform the debtor of:
1. The name of the creditor;
 2. The time and place of the creation of the debt;
 3. The merchandise, services, or other value provided in exchange for the debt; and
 4. The date when the account was turned over to the collection agency by the creditor.
- B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1515. Aiding and Abetting

- A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:
1. This Article, or
 2. A.R.S. Title 32, Chapter 9.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515

(Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1516. Advertising

A collection agency shall not use any form of communication to state or imply that it is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1517. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1517 recodified from R4-4-1517 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1519. Licensee Names and Control

- A. The Department shall not issue a license with a name that is:
1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
 2. Descriptive of any business activity that the applicant does not actually conduct;
 3. The same as, or similar to, the name of any existing collection agency, or;
 4. Otherwise deceptive or misleading.
- B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of

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whether the name includes geographic or other information that distinguishes it from the other collection agency.

- C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

- A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:
1. Misrepresent the person's true position with the collection agency,
 2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or
 3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee, or
 4. Claim to be, or imply that the person is, any other third party.
- B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
- C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
1. The true name of each debt collector that uses a fictitious name,
 2. Each fictitious name used by the debt collector, together with the dates when the name is used, and
 3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1).

Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1522. Reserved

R20-4-1523. Reserved

R20-4-1524. Reserved

R20-4-1525. Reserved

R20-4-1526. Reserved

R20-4-1527. Reserved

R20-4-1528. Reserved

R20-4-1529. Reserved

R20-4-1530. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS**R20-4-1601. Definitions**

In this Article, unless the context otherwise requires:

"Acquiring party" means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.

"Acquisition of control" has the meaning stated in A.R.S. § 6-141.

"Bank" has the meaning stated in A.R.S. § 6-101.

"Control" has the meaning stated in A.R.S. § 6-141.

"Controlling person" has the meaning stated in A.R.S. § 6-141.

"Person" has the meaning stated in A.R.S. § 6-141.

"Savings and loan association" means a person required to possess a permit issued by the Superintendent under A.R.S. Title 6, Chapter 3.

"Superintendent" has the meaning stated in A.R.S. § 6-101.

"Target company" means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.

"Trust company" has the meaning stated in A.R.S. § 6-851.

"Voting security" has the meaning stated in A.R.S. § 6-141.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

- A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter

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1, Article 4, shall file with the Superintendent copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.

- B.** As used in this subsection, “executive officer” includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Superintendent requires under this subsection. The Superintendent may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:
1. A copy of the signed purchase agreement,
 2. The applicant’s audited financial statement,
 3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party,
 4. Each executive officer’s and each director’s audited financial statement,
 5. A fingerprint card for each executive officer and each director, and
 6. A copy of each executive officer’s and each director’s driver’s license.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1603. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed**Historical Note**

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT**R20-4-1701. Definitions**

In this Article, unless the context otherwise requires:

- “Acquire” has the meaning stated at A.R.S. § 6-321(1).
- “Applicant” means an out-of-state financial institution that intends to acquire control of an in-state financial institution.
- “Control” has the meaning stated at A.R.S. § 6-321(2).
- “In-state financial institution” has the meaning stated at A.R.S. § 6-321(5).
- “Out-of-state financial institution” has the meaning stated at A.R.S. § 6-321(6).

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1702. Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution’s Charter

- A.** An applicant shall give written notice of an acquisition to the Superintendent in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Superintendent not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Superintendent may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.
- B.** An acquired in-state financial institution shall surrender, by delivery to the Superintendent, all permits and certificates issued by the Superintendent within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1703. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

- A.** An applicant shall transmit to the Superintendent of Banks two copies of each notice and the publisher’s affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.
- B.** An applicant shall provide the Superintendent of Banks copies of any protests known to have been received by the Federal Reserve Board, Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1705. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

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Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS**R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States**

- A. The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a “mortgage banking loan” or a “mortgage loan,” as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant’s accounting and recordkeeping practices;
 2. The authority to examine a claimant’s books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant’s mortgage banking activities, mortgage lending activities, or both.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

- A. An applicant may satisfy the three years’ experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
 2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
 3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
 4. Lender’s branch manager with responsibility primarily for loans secured by lien interests on real property;
 5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
 6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
 7. Attorney certified by any state as a real estate specialist.
- B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years’ experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years’ actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).
1. Attorney without state bar

- certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage banker or mortgage broker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender’s branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee’s principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

- A.** The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant's name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
 - a. Payor's name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt's purpose including identification of a related loan, if any;
 3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose; and
 - j. Balance;
 6. A file for each application for a mortgage banking loan or a mortgage loan containing:
 - a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement and escrow instructions to or with any depository;
 - e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
 - f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;
 - g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
 7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
 8. Copies of governmental or regulatory compliance reviews;
 9. If the licensee is not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

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- D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
 2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.
- E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records

For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:

1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts

The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay

A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account

The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License

Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS**R20-4-1901. Exemption for an Institutional Investor**

- A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:
1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
 2. The claimant does so in the regular course of business;
 3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
 4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
 5. The claimant makes only loans of more than \$250,000.
- B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

- A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a “commercial mortgage loan,” as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.
- B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant’s accounting and recordkeeping practices;
 2. The authority to examine a claimant’s books and records relating to its commercial mortgage lending activities;
 3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant’s commercial mortgage lending activities.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

- A. An applicant may satisfy the three years’ experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.
1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
 2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
 3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
 4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
 5. Lender’s branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
 6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
 7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
 8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
 9. Attorney certified by any state as a real estate specialist.
- B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address

If a licensee changes the licensee’s principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

- A. The Superintendent shall approve a licensee’s use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system’s hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system’s fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
 2. An approved mechanical system to a computer system; or
 3. An approved computer system to a mechanical system.
- B. In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
 - a. Applicant’s name;
 - b. Application date;
 - c. Amount of initial loan request;
 - d. Final disposition date;
 - e. Disposition (funded, denied); and
 - f. Name of loan officer;
 2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
 - a. Payor’s name;
 - b. Date received;
 - c. Amount; and
 - d. Receipt’s purpose including identification of a related loan, if any;

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3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
 - a. Payee's name;
 - b. Amount;
 - c. Date; and
 - d. Payment's purpose including identification of a related loan, if any;
 4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
 5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
 - a. Borrower's name or co-borrowers' names;
 - b. Loan number, if any;
 - c. Amount received;
 - d. Purpose for the amount received;
 - e. Date received;
 - f. Date deposited into trust account;
 - g. Amount disbursed;
 - h. Date disbursed;
 - i. Disbursement's payee and purpose, and
 - j. Balance.
 6. A file for each application for a commercial mortgage loan containing:
 - a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
 - b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
 - c. Correspondence sent, received, or both by the licensee;
 - d. Contract, agreement, and escrow instructions to or with any depository;
 - e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
 - f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
 7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
 8. Copies of governmental or regulatory reviews;
 9. If the licensee is a not a natural person, a file containing:
 - a. Organizational documents for the entity;
 - b. Minutes;
 - c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
 - d. Annual report, if required by law;
 10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
 11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
 12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
 13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
 14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.
- C.** If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.
- D.** A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or
 2. The date a licensee mails written notice to an applicant that an application has been denied; or
 3. The date of a licensee's internal memorandum closing a loan file.
- E.** A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R.
2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R.
2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by**Majority Owner**

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R.
2094, effective June 10, 1999 (Supp. 99-2).

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-138. Hearings

The superintendent or an administrative law judge shall conduct hearings, including hearings relating to orders of the superintendent granting, denying, revoking or suspending a permit, certificate or license provided for under this title, in accordance with title 41, chapter 6, article 10.

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-126. Application fees for financial institutions and enterprises

- A. The following nonrefundable fees are payable to the department with the filing of the following applications:
1. To apply for a banking permit, one thousand dollars.
 2. To apply for an amendment to a banking or savings and loan association permit, one thousand dollars.
 3. To establish each banking branch office, seven hundred fifty dollars.
 4. To move a banking office to other than an established office of a bank, one thousand dollars.
 5. To apply for a savings and loan association permit, five thousand dollars.
 6. To establish each savings and loan association branch office, one thousand five hundred dollars.
 7. To move an office of a savings and loan association to other than an established office, one thousand dollars.
 8. To organize and establish a credit union, one hundred dollars.
 9. To establish each credit union branch or to move a credit union office to other than an established office of a credit union, two hundred fifty dollars.
 10. To organize and establish any other financial institutions for which an application or investigation fee is not otherwise provided by law, one thousand dollars.
 11. To acquire control of a financial institution other than a consumer lender, five thousand dollars.
 12. To apply for a trust company license, one thousand dollars.
 13. To apply for a commercial mortgage banker, mortgage banker, escrow agent or consumer lender license, one thousand dollars.
 14. To apply for a mortgage broker, commercial mortgage broker, sales finance company or debt management company license, five hundred dollars.
 15. To apply for a collection agency license, one thousand five hundred dollars.
 16. To apply for a deferred presentment company license, one thousand dollars.
 17. To apply for a branch office of an escrow agent, consumer lender, commercial mortgage banker, mortgage banker, trust company, money transmitter, collection agency or deferred presentment company, five hundred dollars.
 18. To apply for a branch office of a mortgage broker, commercial mortgage broker, debt management company or sales finance company, two hundred fifty dollars.
 19. To apply for approval of the articles of incorporation of a business development corporation, five hundred dollars.
 20. To apply for approval for the merger or consolidation of two or more financial institutions, five thousand dollars per institution.
 21. To apply for approval to convert from a national bank or federal savings and loan charter to a state chartered institution, one thousand dollars.

22. To apply for approval to convert from a federal credit union to a state chartered credit union, five hundred dollars.
 23. To apply for approval to merge or consolidate two or more credit unions, five hundred dollars per credit union.
 24. To move an established office of an enterprise to other than an established office, fifty dollars.
 25. To issue a duplicate or replace a lost enterprise's license, one hundred dollars.
 26. To change a responsible person on a mortgage broker's, commercial mortgage broker's, commercial mortgage banker's or a mortgage banker's license, two hundred fifty dollars.
 27. To change an active manager on a collection agency license or a manager of a money transmitter branch office license, two hundred fifty dollars.
 28. To change the licensee name on a financial institution or enterprise license, not more than two hundred fifty dollars.
 29. To apply for a money transmitter license, one thousand five hundred dollars plus twenty-five dollars for each branch office and authorized delegate to a maximum of four thousand five hundred dollars.
 30. To acquire control of any money transmitter or controlling person pursuant to chapter 12 of this title, two thousand five hundred dollars.
 31. To receive the following publications:
 - (a) Quarterly bank and savings and loan statement of condition, not more than ten dollars per copy.
 - (b) Monthly summary of actions report, not more than five dollars per copy.
 - (c) A list of licensees, a monthly pending actions report and all other in-house prepared reports or listings made available to the public, not more than one dollar per page.
 32. To apply for a loan originator license, an amount to be determined by the superintendent.
 33. To apply for a loan originator license transfer, an amount to be determined by the superintendent.
 34. To apply for a conversion from a mortgage banker license to a mortgage broker license, an amount to be determined by the superintendent.
- B. On issuance of a license or permit for a financial institution or enterprise, the superintendent shall collect the first year's annual assessment or renewal fee for the financial institution or enterprise prorated according to the number of quarters remaining until the date of the next annual assessment or renewal.
- C. The following annual renewal fees shall be paid each year:
1. For an escrow agent or trust company, one thousand dollars plus two hundred fifty dollars for each branch office.
 2. For a debt management company or sales finance company, five hundred dollars plus two hundred dollars for each branch office.
 3. For a collection agency, six hundred dollars plus two hundred dollars for each branch office.
 4. For an inactive mortgage broker or commercial mortgage broker, two hundred fifty dollars.

5. For a mortgage banker that negotiates or closes in the aggregate one hundred loans or less in the immediately preceding calendar year, seven hundred fifty dollars, and for a mortgage banker that negotiates or closes in the aggregate over one hundred loans in the immediately preceding calendar year, one thousand two hundred fifty dollars. In addition, a mortgage banker shall pay two hundred fifty dollars for each branch office.

6. For a commercial mortgage banker, one thousand two hundred fifty dollars. In addition, a commercial mortgage banker shall pay two hundred fifty dollars for each branch office.

7. For a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate fifty loans or less in the immediately preceding calendar year, two hundred fifty dollars and for a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate more than fifty loans in the immediately preceding calendar year, five hundred dollars. In addition, a mortgage broker or commercial mortgage broker shall pay two hundred dollars for each branch office.

8. For a consumer lender, one thousand dollars plus two hundred dollars for each branch office.

9. For a money transmitter, five hundred dollars plus twenty-five dollars for each branch office and each authorized delegate to a maximum of two thousand five hundred dollars.

10. For a deferred presentment company, four hundred dollars. In addition, a deferred presentment company shall pay two hundred dollars for each branch office.

11. For a loan originator, an amount to be determined by the superintendent.

12. For an inactive status loan originator, an amount to be determined by the superintendent.

D. The license, renewal or branch office permit fee for a premium finance company for each calendar year or part of a calendar year shall not be less than one hundred dollars or more than three hundred dollars as set by the superintendent. If the license is issued or the branch office is opened after June 30 in any year, the fees shall not be less than fifty dollars or more than one hundred fifty dollars for that year.

6-991.03. Licensing; renewal; qualifications; application; fees

A. A natural person shall not act as a loan originator unless the person is licensed under this article.

B. The superintendent shall not grant a loan originator license to a person, other than a natural person. An applicant for an original loan originator's license shall have done all of the following:

1. Satisfactorily completed a course of study, including at least twenty hours of education, for loan originators approved by the superintendent during the three-year period immediately preceding the time of application. The twenty hours of education must include at least all of the following:

- (a) Three hours of federal law.
- (b) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues.
- (c) Two hours of training related to lending standards of the nontraditional mortgage product marketplace.
- (d) Four hours of the laws of this state.

2. Completed late continuing education for the purposes of satisfying continuing education for the last year that the loan originator was in renewable status.

3. Passed a loan originator's examination pursuant to section 6-991.07. The applicant shall demonstrate knowledge and understanding of the following:

- (a) Federal laws.
- (b) Other applicable laws.
- (c) Subjects described in section 6-991.07, subsection A.

4. Retaken the loan originator's examination if the licensed loan originator failed to maintain a valid license for a period of five years or longer, not including any time during which the applicant is a registered loan originator.

5. Obtained a unique identifier through the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor.

6. Deposited with the superintendent a bond executed by the applicant's employer or registered exempt person as principal and a surety company licensed to do business in this state as a surety pursuant to section 6-903, 6-912 or 6-943.

7. Submitted fingerprints to the department for the purpose of a background investigation.

8. Paid an amount to be determined by the superintendent for deposit in the mortgage recovery fund established pursuant to section 6-991.09 or deposited with the superintendent a bond executed by the applicant's employer or registered exempt person as principal and a surety company licensed or approved to do business in this state for the benefit of any person aggrieved by any act, representation, transaction or conduct of a licensed loan originator that violates this title or the rules adopted pursuant to this title. Notwithstanding section 6-903 or 6-943, the amount of the bond shall be in an amount of not less than two hundred thousand dollars. Loan originators working under the employer or registered exempt person bond described in this paragraph do not have to contribute to the mortgage recovery fund.

C. A person shall apply for a license or renewal of a license in writing in the manner prescribed by the superintendent and accompanied by the information prescribed by the superintendent.

D. Before submitting a renewal application, an applicant for renewal of a loan originator license shall have satisfactorily completed eight approved continuing education units that include at least:

1. Three hours of federal law.
2. Two hours of ethics, including instruction on fraud, consumer protection and fair lending issues.
3. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
4. One hour of the laws of this state.

E. Education courses taken before licensure shall be reviewed and approved by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor.

F. Continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. A licensed loan originator:

1. May only receive credit for a continuing education course in the year in which the course is taken.
2. May not take the same approved course in the same year or successive years to meet the annual requirements for continuing education.

G. The nonrefundable application fee shall accompany each application for an original loan originator license.

H. A license issued pursuant to this article is not transferable or assignable.

I. At the superintendent's discretion, application fees may be waived if the applicant is a housing counselor certified by the United States department of housing and urban development and employed by a nonprofit agency.

J. Each mortgage broker, mortgage banker or registered exempt person shall submit to the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor reports of condition that are in a form and that contain information required by the nationwide mortgage licensing system.

K. The superintendent shall establish a process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

6-991.04. Issuance of license; notice from employing mortgage broker, mortgage banker or consumer lender or registered exempt person; renewal; inactive status; address change; fee

A. The superintendent, on determining that an applicant is qualified and has paid the required fees, shall issue a loan originator's license to the applicant evidenced by a continuous certificate. The superintendent shall grant or deny a license within one hundred twenty days after receiving the completed application and fees. An applicant who has been denied a license may not reapply for a license before one year from the date of the previous application.

B. On issuance of the license, the superintendent shall keep the loan originator's license until a mortgage broker or mortgage banker licensed pursuant to this chapter or a consumer lender employs the loan originator and the employer provides a written notice that the employer has hired the loan originator or until an exempt person who is registered pursuant to section 6-912 provides a written notice that the exempt person has engaged the loan originator on an exclusive contract with the exempt person. The employer shall provide the notice before the loan originator begins working for the employer. Exempt persons who are registered pursuant to section 6-912 shall provide the notice before the loan originator begins work under the exclusive contract with the exempt person. The notice shall be from an officer or other person authorized by the employer or registered exempt person. The notice shall contain a request for the loan originator's license and shall be dated, signed and notarized. On receipt of the request, the superintendent shall forward the loan originator's license to the employing mortgage broker, mortgage banker, consumer lender or registered exempt person.

C. Licenses shall be issued for a one-year period.

D. A loan originator shall apply for renewal on forms prescribed by the superintendent. The application shall include original certificates evidencing the loan originator's successful completion of eight continuing education units during the preceding one-year period by a continuing education provider approved by the superintendent.

E. A loan originator shall pay the renewal fee every year on or before December 31. Licenses not renewed by December 31 are suspended, and the licensee shall not act as a loan originator until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus a dollar amount to be determined by the superintendent for each day after December 31 that a license renewal fee is not received by the superintendent.

F. Licenses that are not renewed by January 31 of each year expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

G. From December 1 through December 31 of each renewal period, a licensee may request inactive status for the following license period. The license shall be placed on inactive status after the licensee pays to the superintendent the inactive status renewal fee and surrenders the license to the superintendent. During inactive status, an inactive licensee shall not act as a loan originator. The license expires if the licensee violates this subsection.

H. At renewal an inactive licensee may return to active status by doing all of the following:

1. Providing the superintendent with evidence that the licensee has met the requirements of section 6-991.03, subsection B.
2. Making a written request to the superintendent for reactivation.
3. Paying the annual licensing fee.
4. Providing the superintendent with proof that the licensee meets all other requirements for acting as a loan originator.

I. The mortgage broker, mortgage banker, consumer lender or registered exempt person shall keep and maintain at the principal place of business in this state the loan originator's license during the loan originator's employment or exclusive contract term. A copy of the loan originator's license shall be available for public inspection during regular business hours.

J. A loan originator shall immediately notify the superintendent of a change in the loan originator's residence address. The superintendent shall endorse the change of address on the license for a fee to be determined by the superintendent.

K. Within five business days after any licensee's employment termination, the employing mortgage broker, mortgage banker, consumer lender or registered exempt person shall do both of the following:

1. Notify the superintendent of the licensee's termination.
2. Return the license to the superintendent.

L. An applicant for a loan originator license who is currently registered with the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor may be granted a temporary license for a period not to exceed one hundred eighty days.

M. The superintendent shall establish a process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

6-991.07. Examination; fee; definition

A. Each applicant for an original loan originator license, before issuance of the license, shall take and pass an examination that is developed or otherwise deemed acceptable by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor and that is given under the supervision of the department or its designee. The examination must reasonably examine the applicant's knowledge of all of the following:

1. The obligations between principal and agent.
2. The applicable canons of business ethics.
3. The arithmetical computations common to mortgage brokerage.
4. The principles of real estate lending.
5. The general purposes and legal effect of mortgages, deeds of trust and security agreements.
6. The terms and conditions of conforming and nonconforming residential mortgage products.

B. The examination is subject to the superintendent's approval.

C. An applicant may take the examination three consecutive times with each consecutive taking occurring at least thirty days after the preceding examination. An applicant who fails the examination on three consecutive occasions must wait at least six months before taking the examination again.

D. All examinations shall be given, conducted and graded in a fair and impartial manner and without unfair discrimination between individuals examined. The department's designee shall inform the applicant of the result of the examination within thirty days after the examination.

E. The superintendent shall set the fee for each examination that is consistent with the requirements established by the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may contract for the examination for the licensing of applicants. If the superintendent contracts for the examination, the fee for examination for licenses pursuant to this section is payable directly to the contractor by the applicant for examination.

F. For the purposes of this section, "applicant" means a person who has submitted a completed application in the form prescribed by the superintendent.

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-124. Investigations; compelling testimony and the production of documents; self-incrimination

A. The superintendent may conduct examinations and investigations within or outside this state to determine whether any person has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to persons subject to the jurisdiction of the superintendent or any order of the superintendent or to aid in the enforcement of this title or to aid in adopting rules.

B. The superintendent and any examiner or administrative law judge, in the performance of the superintendent's, examiner's or administrative law judge's duties, may take evidence, examine on oath any person and compel the attendance of witnesses and the production of documents, books and papers. Upon refusal to appear or produce, the superintendent may apply to the superior court in Maricopa county to compel appearance or production.

C. All financial institutions and enterprises shall, upon request of the superintendent, make their books and records available for inspection and examination by the superintendent or the superintendent's examiners.

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

Article 15 Specific Statutory Authority: See A.R.S. Section 32-1001 et seq. (Collection Agencies Act).

<https://www.azleg.gov/arsDetail/?title=32> (Arizona Revised Statutes Title 32, Chapter 9).

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-145. Application for approval

A. An application for approval of the superintendent shall be in writing in such form as the superintendent may prescribe and shall be accompanied by such information, data and records as the superintendent may require. For such purpose the superintendent shall adopt rules prescribing the form and the information, data or records which may be required.

B. Upon receipt of any initial application for approval or any amendment or supplement to such application, the superintendent shall cause copies of such application, amendment or supplement to be given to the bank, trust company or savings and loan association concerned within three business days.

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.
2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.
3. Require appropriate records, documents, information and reports from any financial institution or enterprise.
4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
 - (a) A banking permit.
 - (b) Permission to organize a savings and loan association or credit union.
 - (c) Any license.
 - (d) Any certificate.
 - (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.
6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.
7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.
8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-322. Interstate acquisitions; approval of superintendent; exception

A. Except as otherwise expressly permitted by federal law, an out-of-state financial institution shall not acquire an in-state financial institution unless the superintendent has approved the acquisition. The superintendent shall not approve an acquisition unless the superintendent has determined that deposits held in this state will be insured by the federal deposit insurance corporation when business in this state is commenced.

B. For those out-of-state financial institutions required to obtain approval from the superintendent as prescribed by subsection A, the acquiring financial institution shall submit to the superintendent a written application for approval in the form the superintendent prescribes. The acquiring financial institution shall accompany the application with such information, data and records as the superintendent may require in order to make the determination. In an interstate transaction, the superintendent may accept an application that is in the form and manner prescribed by the state or federal agency that is the primary regulator of the applicant and that is supplemented as necessary to allow the superintendent to determine whether to deny or approve the application. The superintendent shall adopt rules prescribing the form and the information, data or records that the superintendent requires. In evaluating applications for acquisition pursuant to subsection F, the superintendent may give consideration to the potential impact of the acquisition on the financial stability of the acquiring institution.

C. A newly established in-state financial institution created for the purpose of acquiring all or substantially all the assets of a former in-state financial institution from an out-of-state financial institution shall not constitute a de novo entry if the acquisition by the newly established in-state financial institution is completed within ninety days of the date on which the out-of-state financial institution acquired all or substantially all of the assets of the former in-state financial institution.

D. In the case of an out-of-state financial institution that is not required to obtain the approval of the superintendent, the out-of-state financial institution shall give written notice of the acquisition to the superintendent ten days before the effective date of the acquisition, unless a shorter time is prescribed by federal law.

E. From and after August 31, 2001, an out-of-state financial institution may acquire a branch of an in-state financial institution for operation as a branch without acquiring the entire in-state financial institution or its permit. A branch of an in-state financial institution is not eligible to be acquired unless it has been in continuous operation five or more years.

F. Notwithstanding subsection E, an out-of-state financial institution may acquire a branch of an in-state financial institution without acquiring the entire institution if all of the following apply:

1. The financial institution proposed to be acquired is in danger of being placed in receivership.
2. The acquisition is necessary to protect the financial interests of the in-state financial institution's depositors and creditors.
3. The terms of the acquisition are acceptable to the relevant federal agency.
4. The superintendent approves the acquisition pursuant to this section in writing.

6-327. Applicable laws and rules; cooperative agreements; contracting exemption

A. Any bank, savings and loan association, out-of-state financial institution or holding company doing business as such in this state is subject to the applicable laws of this state and all the rules adopted pursuant to such laws, including examination and supervision by the superintendent.

B. In the case of an acquisition to create a branch in this state, the acquisition is prohibited unless the home state of the out-of-state financial institution permits reciprocal acquisitions for the same purposes.

C. An out-of-state financial institution that acquires an in-state financial institution or an out-of-state financial institution that is the result of a merger with an in-state financial institution may do either of the following subject to applicable state and federal laws:

1. Continue to operate the in-state financial institution.
2. Convert any existing principal banking office or any or all branches in this state into a branch of the out-of-state financial institution.

D. An in-state branch of an out-of-state financial institution shall comply with the laws of the institution's home state, or shall comply with federal law in the case of a federally chartered institution. The laws of the institution's home state apply, except as follows:

1. The laws of this state apply if necessary to preserve the safety and sound operation of a branch in this state or to otherwise protect the citizens of this state.
2. Any laws of this state regarding community reinvestment, consumer protection, fair lending and intrastate branching apply to a branch in this state of an out-of-state financial institution to the same extent that those laws apply to an in-state financial institution.
3. An out-of-state financial institution that is authorized to operate a branch in this state may engage in activity only to the extent permissible for an in-state financial institution.

E. Subsection D does not limit the jurisdiction or authority of the superintendent to examine, supervise and regulate an out-of-state financial institution that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.

F. An out-of-state bank that operates a branch in this state shall do both of the following:

1. Obtain a grant of authority to transact business in this state and comply with all other applicable filing requirements prescribed by title 10 to the same extent as any other entity transacting business in this state.
2. Provide written notice to the superintendent of the out-of-state bank's grant of authority to transact business in this state.

G. The superintendent may adopt rules, including the imposition of reasonable application and examination fees, to implement and administer this article.

H. The superintendent may do any of the following:

1. Examine, supervise and regulate a branch operated in this state by an out-of-state bank and take any action or issue any order with respect to that branch.
2. Examine, supervise and regulate a branch operated in another state by a bank and take any action or issue any order with respect to that branch.

3. Coordinate these activities with any other state or federal agency that shares jurisdiction over that financial institution.
 4. Coordinate the examination, supervision and regulation of any in-state financial institution with the examination, supervision and regulation of a branch or affiliated financial institution that is operating in another state by doing any of the following:
 - (a) Contracting with an agency that shares jurisdiction over the financial institution to retain its examiners at a reasonable rate of compensation.
 - (b) Offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the financial institution.
 - (c) Collecting fees on behalf of or receiving payment of fees through an agency that has jurisdiction over the financial institution.
 5. Enter into cooperative agreements with federal and state regulatory authorities for the examination and supervision of any acquired or de novo entry bank, savings and loan association or holding company and may accept reports of examination and other records from those authorities instead of conducting an examination.
- I. The department is exempt from title 41, chapter 23 in contracting for examiners pursuant to subsection H, paragraph 4, subdivision (a).

DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

Title 4, Chapter 36, All Articles, Department of Forestry and Fire Management



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 11, 2020

SUBJECT: DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT
Title 4, Chapter 36, All Articles, Department of Forestry and Fire Management

Summary

This Five-Year Review Report (5YRR) from the Department of Forestry and Fire Management (Department) relates to all rules in Title 4, Chapter 36 which establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide a reasonable level of safety to firefighters and emergency responders during emergency operations.

The Department indicates that it completed its prior proposed course of action from the last 5YRR which was approved by the Council in May 2016.

Proposed Action

The Department indicates it intends to adopt the 2018 edition of the International Fire Code (IFC) as the minimum State Fire Code to replace the current 2012 edition and to be consistent with other jurisdictions located throughout this state that have already adopted the 2018 edition. The Department indicates it intends to complete this proposed course of action by January 2021.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules provide that unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (IFC). The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the Hazards of fire, explosion or dangerous conditions in new and existing buildings, structures, and premises, and to provide a reasonable level of safety to firefighters and emergency responders during emergency operations. The Department indicates that the proposed adoption of IFC 2018 edition is expected to have a minimal economic impact due mainly to subsequent modifications since the IFC 2012 edition, which include both less and more restrictive mandates for building construction codes i.e. plumbing, electrical, and mechanical; additionally, National Fire Protection Association (NFPA) Standards.

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

The Department believes the fire code is a minimum nationally recognized standard and with the amendments adopted, no undue burden has been imposed on the State. The Department goes on to state that this should be self-evident, as the growth of the State has not been impeded through this rule. Furthermore, the Department indicates the statistical rate of fire, property damage, and injury is minimal due to the enforcement of the rule.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rule in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are clear, concise, and understandable.

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

The Department indicates that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates that the rules are effective in achieving their regulatory objectives.

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

The Department indicates it has successfully provided enforcement of the fire code in those facilities wherever located throughout the state, mandated by law as reported in an activity report either through internal staff or through agreements with other jurisdictions.

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

The Department indicates the rules are not more stringent than corresponding federal law. Specifically, the Department indicates that the Federal government primarily utilizes the National Fire Protection Association (NFPA) Codes and Standards. The rules are equal in stringency and application to those codes and standards.

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. Specifically, rules R4-36-301 through R4-36-308 were adopted prior to July 29, 2010.

11. Conclusion

The Department indicates that the rules are clear, concise, understandable, consistent, effective, and enforced. The Department proposes to amend the rules to incorporate the 2018 edition of the International Fire Code (IFC) as the minimum State Fire Code to replace the current 2012 edition and to be consistent with other jurisdictions located throughout this state that have already adopted the 2018 edition. The Department indicates it intends to complete this proposed course of action by January 2021.

Council staff recommends approval of this report.



Douglas A. Ducey
Governor

Office of the State Forester

Arizona Department of Forestry and Fire Management



David Tenney
Interim Director

November 3, 2020

VIA EMAIL: grrc@azdoa.gov

Nichole Sornsins, Chair
Governors' Regulatory Review Council
Arizona Department of Administration
100 N. 15th, Ave Suite 305
Phoenix, AZ 85007

RE: Department of Forestry and Fire Management-DFFM Title 4 Chapter 36 Five-Year-Review-Report

Dear Ms. Sornsins:

Please find the enclosed Five-Year-Review-Report submitted on behalf of the Department of Forestry and Fire Management-DFFM for Title 4 Chapter 36, which is due on November 30, 2020. Furthermore, the Department of Forestry and Fire Management hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Cassie Peters at 602-364-1015 or Email: cpeters@dffm.az.gov

Sincerely,

Cassie Peters

Cassie Peters, DFFM
Asst. Director-State Fire Marshal

Duty ♦ Respect ♦ Integrity



Douglas A. Ducey
Governor

Office of the State Forester

Arizona Department of Forestry and Fire Management



David Tenney
Interim Director

Department of Forestry and Fire Management

5 YEAR REVIEW REPORT

A.A.C. TITLE 4 PROFFESSIONS AND OCCUPATIONS CHAPTER 36 DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

November 3, 2020

1. Authorization of the rule by existing statues:

Title 37 Section 37-1383 Powers and Duties Subsection A.2.

2. The objective of each rule:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

3. Are the rules effective in achieving their objectives? Yes X No _

4. Are the rules consistent with other rules and statues? 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 proposed adoption of IFC 2018 edition is projected to have minimal economic impact due mainly to subsequent modifications since the IFC 2012 edition, both less and more restrictive mandates for building construction codes i.e. plumbing, electrical, and mechanical; additionally, National Fire Protection Association (NFPA) Standards.

9. Has the agency received any business competitiveness analyses of the rules? Yes No X

Duty ♦ Respect ♦ Integrity

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report? Yes X No

The agency has successfully provided enforcement of the fire code in those facilities wherever located throughout the state, mandated by law as reported in an activity report either through internal staff or through agreements with other jurisdictions.

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:

Being the fire code is a minimum nationally recognized standard and with the amendments adopted, no undue burden has been imposed on the State. This should be self-evident, as the growth of the State has not been impeded through this rule. Furthermore, the statistical rate of fire, property damage, and injury is minimal due to the enforcement of the rule.

12. The rules more stringent than corresponding federal laws? Yes No X

The Federal government primarily utilizes the NFPA Codes and Standards. This code is equal in its stringency in its application to those codes and standards.

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:

NA - Article 3, consisting of Sections R4-36-301 through R4-36-308, adopted effective November 1, 1995

14. Proposed course of action:

Adopt the 2018 edition of the International Fire Code (IFC) as the minimum State Fire Code to replace the current 2012 edition and to be consistent with other jurisdictions located throughout this state that have already adopted the 2018 edition. Renew those agreements with local jurisdictions that have entered into agreements with this agency in the enforcement of the IFC. Then to propose an adoption schedule that is consistent with the numerous fire jurisdictions in the State when the newer editions of the IFC become available. This is typically a three-year schedule as the publishers of the code produce an updated version however; a six-year adoption schedule is preferred as the changes to the code are not significant to require an every code cycle adoption. This is consistent practice with the majority of the fire jurisdictions located throughout the State. Requesting an effective date of January 2, 2021.

Sincerely,


Cassie Peters, DFFM Asst. Director
State Fire Marshal

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

(Authority: A.R.S. § 41-2141 *et seq.*)

Editor's Note: The Department of Building and Fire Safety's name was changed to the Department of Fire, Building and Life Safety under the authority of A.R.S. § 41-2141, Laws 2005, Ch. 245, effective June 30, 2006 (Supp. 06-2).

Editor's Note: Chapter 36, formerly the Department of Building and Fire Safety, is now the Department of Fire, Building and Life Safety. This change became effective when the Department of Building and Fire Safety changed its name to the Department of Fire, Building and Life Safety, effective June 30, 2006 (Supp. 06-2). (Should Note Current Changes to DFFM)

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

4 A.A.C. 34, Article 11, consisting of Section R4-34-1101, renumbered to A.A.C. R4-36-201 (Supp. 95-4). Introduction and Section number below corrected (Supp. 97-4). Article 11 consisting of Section R4-34-1101 adopted as a permanent rule effective November 16, 1988. Article 11 consisting of Section R4-34-1101 adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired. Section R4-36-201. Incorporation by Reference of the International Fire Code R4-36-202. Fees

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

Article 3, consisting of Sections R4-36-301 through R4-36-311, made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Article 3, consisting of Sections R4-36-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Interim effective date corrected Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). Article 3, consisting of Sections R4-36-301 through R4-36-308, adopted effective November 1, 1995 (Supp. 95-4). Introduction corrected (Supp. 97-4).

Section

R4-36-301. Definitions

R4-36-302. Appendices

Exhibit A. Incorporated Appendices

R4-36-303. Permits

R4-36-304. Inspections and Enforcement

R4-36-305. General Precautions Against Fire

R4-36-306. Emergency Planning and Preparedness

R4-36-307. Fire Service Features

R4-36-308. Building Services and Systems

R4-36-309. Fire Protection Systems

R4-36-310. Explosives and Fireworks

R4-36-311. Repealed

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS

Article 4, consisting of Sections R4-36-401 through R4-36-403, made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1). Section R4-36-401. Material Incorporated by Reference R4-36-402. Modification of NFPA 1124 R4-36-403. Civil Penalties

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (**2018 Edition**), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, and J, which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

Historical Note

Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-36-201 renumbered from R4-34-1101 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-202. Fees

A. Under the authority provided by A.R.S. § 41-2146(D), the State Fire Safety Committee establishes the following schedule of fees:

1. Plan submission fees:
 - a. Each plan submitted: \$210, and
 - b. Each plan supplement submitted or each re-review of a previously submitted plan: \$30;
2. Plan review fees. A separate fee is charged for each system reviewed even if the systems are included in one submitted plan:
 - a. New installation of an automatic fire sprinkler system.
 - i. Servicing less than 10,000 square feet: \$375; Supp. 15-4 Page 2 December 31, 2015
 - ii. Servicing between 10,000 and 50,000 square feet: \$450; iii. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$450; and iv. For each floor level serviced above or below the ground-level floor: \$200;
 - b. Modification of an existing automatic fire sprinkler system.
 - i. System consisting of 1 to 20 sprinkler heads: \$75;
 - ii. System consisting of 21 to 50 sprinkler heads: \$100;
 - iii. System consisting of 51 to 100 sprinkler heads: \$250;
 - iv. System consisting of 101 to 500 sprinkler heads: \$300;
 - v. For each additional 100 sprinkler heads or portion of 100 sprinkler heads in excess of 500: \$100; and
 - vi. For each floor level serviced above or below the ground-level floor: \$200;
 - c. New installation or modification of an extinguishing system using clean agent, halon, dry chemical, carbon dioxide, or other extinguishing material:
 - i. Servicing up to 5,000 square feet: \$200; and
 - ii. For each 5,000 square feet or portion of 5,000 square feet serviced in excess of 5,000 square feet: \$50;
 - d. New installation of one automatic hood extinguishing system: \$150;
 - e. Modification of one existing automatic hood extinguishing system: \$75;
 - f. New installation of a fire pump:
 - i. For the first fire pump: \$250; and
 - ii. For each additional fire pump: \$150;
 - g. Modification of one existing fire pump: \$100;
 - h. New installation or modification of underground fire line and hydrants:
 - i. System consisting of up to 500 lineal feet: \$300; and
 - ii. For each 500 lineal feet or portion of 500 lineal feet in excess of 500 lineal feet: \$175;
 - i. New installation of standpipe system:
 - i. System consisting of up to four standpipes: \$200; and
 - ii. For each four standpipes or portion of four standpipes in excess of four: \$100;
 - j. Modification of standpipe system: \$50;
 - k. New installation of a fire alarm system:
 - i. Servicing up to 1,000 square feet: \$225;
 - ii. Servicing between 1,001 and 2,000 square feet: \$300;
 - iii. Servicing between 2,001 and 10,000 square feet: \$450;
 - iv. Servicing between 10,001 and 50,000 square feet: \$500;
 - v. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$200;
 - vi. For each floor level serviced above or below the ground-level floor: \$200; and
 - vii. For smoke detection throughout serviced area: 50% increase in fee calculated under subsections (A)(2)(k)(i) through (A)(2)(k)(vi); and
 - l. Modification of a fire alarm system by adding:
 - i. One to five fire alarm devices: \$100; and
 - ii. Six or more fire alarm devices: \$150;
3. Permit issuance fees:
 - a. Fire protection permit: \$30 per system permitted;
 - b. Underground liquid fuel storage tank: \$164;

- c. Tire storage: \$82;
 - d. Above-ground liquid fuel storage tank: \$164;
 - e. Pyrotechnics: \$164;
 - f. Special-event tent: \$164;
 - g. Hydrogen fuel cell: \$164;
 - h. Fair or trade show: \$164;
 - i. Explosives or blasting storage: \$164;
 - j. Compressed gases: \$164;
 - k. Cryogenics: \$164; and
 - l. Liquefied petroleum tank: \$164; and
4. Re-inspection fees: If the State Fire Marshal has to conduct a re-inspection because an entity failed to cancel or was not prepared for a previously scheduled inspection or because the site failed the inspection, the State Fire Marshal shall charge a minimum of \$164 for the re-inspection. The State Fire Marshal shall increase the minimum re-inspection fee by \$82 for each 25 miles or portion of 25 miles in excess of the first 25 miles required to travel to and from the site of the re-inspection.

- B.** The State Fire Safety Committee shall authorize the State Fire Marshal to refund any fee paid under this Section if:
- 1. The permit holder applies for a refund on a form furnished by the State Fire Marshal no more than 180 days after the fee is paid; and
 - 2. The State Fire Marshal determines that the fee paid was erroneous.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3).

Editor’s Note: Article 3, consisting of Sections R4-26-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997. Historical notes in this Article were corrected for clarification in Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2).

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

R4-36-301. Definitions

The following terms apply to the State Fire Code established in this Chapter:

- 1. Wherever the terms “fire chief” or “fire code official” are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal’s designated representative, unless the context otherwise requires.
- 2. Wherever the terms “fire department” or “department of fire prevention” are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal’s designated representative unless the context otherwise requires.
- 3. Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:
 - a. Boarding houses (non-transient) with 16 or fewer occupants December 31, 2015 Page 3 Supp. 15-4
 - b. Boarding houses (transient) with 10 or fewer occupants
 - c. Building that do not contain more than four dwelling units
 - d. Care facilities that provide accommodations for five or fewer persons receiving care
 - e. Congregate living facilities (non-transient) with 16 or fewer occupants
 - f. Congregate living facilities (transient) with 10 or fewer occupants
 - g. Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the *International Residential Code*.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-301 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-302. Appendices

The International Fire Code (**2018 Edition**), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. Incorporated Appendices

Section 101.2.1 The following appendices are adopted as part of this Code:

- B: Fire-Flow Requirements for Buildings**
- C: Fire Hydrant Locations and Distribution**
- D102.1 or the minimum requirement of the local fire response agency**

D107.1 or the minimum requirement of the local building or subdivision authority

E: Hazard Categories

F: Hazard Ranking

G: Cryogenic Fluids – Weight and Volume Equivalents

H. Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

I. Fire Protection Systems – Noncompliant Conditions

J. Building Information Sign

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-302 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-303. Permits

A. The following time-frames are established for permits issued under the State Fire Code:

1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.
3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.

B. The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.

C. Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.

D. Section 105.1.2 is modified to read: Types of permits. There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.
2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

E. Section 105.2.4, the first sentence is modified to read: The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.

F. Section 105.3.1, the first sentence is modified to read: An operational permit shall remain in effect until reissued, renewed, or revoked or for 180 days.

G. Section 105.3.3 is modified to read: Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-303 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-304. Inspections and Enforcement

A. Section 108.1 is modified to read: Board of appeals established. To hear and decide appeals of orders, decisions, or Supp. 15-4

Page 4 December 31, 2015 other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of appeal with no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.

B. Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.

C. Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.

D. Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-304 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-305. General Precautions Against Fire

A. Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.

B. Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-305 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-306. Emergency Planning and Preparedness

Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-306 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1).

R4-36-307. Fire Service Features

A. Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.

B. Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-307 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-308. Building Services and Systems

A. Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.

B. Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.

C. Sections 5003.3.1 and 5003.3.1.4 replace “fire code official” with “fire department.”

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-308 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-309. Fire Protection Systems

Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems. December 31, 2015 Page 5 Supp. 15-4

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-310. Explosives and Fireworks

Section 5601.1.3 is modified to read: Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited.

Exceptions:

1. Storage and handling of fireworks as allowed in Section 5604.
2. Manufacture, assembly and testing of fireworks as allowed in Section 5605.
3. The use of fireworks for fireworks displays as allowed in Section 5608.
4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by A.R.S. Title 36, Chapter 13, Article 1 or local ordinances and regulations, provided the fireworks comply with 16 CFR Parts 1500 and 1507 and 49 CFR Parts 100-185, for consumer fireworks.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-311. Repealed**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Section repealed by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS**R4-36-401. Material Incorporated by Reference**

As required by A.R.S. § 36-1609(A), the State Fire Marshal incorporates by this reference NFPA 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, 2013 edition as published August 29, 2012, which is published by the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02169-7471 and is available from NFPA at www.nfpa.org and the Office of the State Fire Marshal. The incorporated material does not include a later amendment or edition but is modified as specified in R4-36-402.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1). Amended by final rulemaking at 21 A.A.R. 571, effective June 7, 2015 (Supp. 15-2).

R4-36-402. Modification of NFPA 1124

- A. Whenever the term "Consumer fireworks" is used in NFPA 1124, substitute the term "Consumer firework" as defined at A.R.S. § 36-1601(1).
- B. Whenever the term "Display fireworks" is used in NFPA 1124, substitute the term "Display firework" as defined at A.R.S. § 36-1601(2).
- C. Whenever the term "Fireworks" is used in NFPA 1124, substitute the term "Fireworks" as defined at A.R.S. § 36-1601(3).

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

R4-36-403. Civil Penalties

A. Under the authority provided by A.R.S. § 36-1610, the State Fire Marshal shall impose a civil penalty of \$1,000 for each incident of prohibited use of fireworks on state land when the State Fire Marshal determines that the incident of prohibited use of fireworks posed a risk of harm to life or property.

B. As used in A.R.S. § 36-1610 and subsection (A), an incident of prohibited use of fireworks means the combustion, explosion, deflagration, or detonation of a single firework device.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

(Authority: A.R.S. § 41-2141 *et seq.*)

Editor's Note: The Department of Building and Fire Safety's name was changed to the Department of Fire, Building and Life Safety under the authority of A.R.S. § 41-2141, Laws 2005, Ch. 245, effective June 30, 2006 (Supp. 06-2).

Editor's Note: Chapter 36, formerly the Department of Building and Fire Safety, is now the Department of Fire, Building and Life Safety. This change became effective when the Department of Building and Fire Safety changed its name to the Department of Fire, Building and Life Safety, effective June 30, 2006 (Supp. 06-2).

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

4 A.A.C. 34, Article 11, consisting of Section R4-34-1101, renumbered to A.A.C. R4-36-201 (Supp. 95-4). Introduction and Section number below corrected (Supp. 97-4).

Article 11 consisting of Section R4-34-1101 adopted as a permanent rule effective November 16, 1988.

Article 11 consisting of Section R4-34-1101 adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Section

- R4-36-201. Incorporation by Reference of the International Fire Code
R4-36-202. Fees

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

Article 3, consisting of Sections R4-36-301 through R4-36-311, made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1).

Article 3, consisting of Sections R4-36-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Interim effective date corrected Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2).

Article 3, consisting of Sections R4-36-301 through R4-36-308, adopted effective November 1, 1995 (Supp. 95-4). Introduction corrected (Supp. 97-4).

Section

- R4-36-301. Definitions
R4-36-302. Appendices
Exhibit A. Incorporated Appendices
R4-36-303. Permits
R4-36-304. Inspections and Enforcement
R4-36-305. General Precautions Against Fire
R4-36-306. Emergency Planning and Preparedness
R4-36-307. Fire Service Features
R4-36-308. Building Services and Systems
R4-36-309. Fire Protection Systems
R4-36-310. Explosives and Fireworks
R4-36-311. Repealed

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS

Article 4, consisting of Sections R4-36-401 through R4-36-403, made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

Section

- R4-36-401. Material Incorporated by Reference
R4-36-402. Modification of NFPA 1124
R4-36-403. Civil Penalties

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (2012 Edition), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, and J, which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

Historical Note

Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-36-201 renumbered from R4-34-1101 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-202. Fees

- A. Under the authority provided by A.R.S. § 41-2146(D), the State Fire Safety Committee establishes the following schedule of fees:
1. Plan submission fees:
 - a. Each plan submitted: \$210, and
 - b. Each plan supplement submitted or each re-review of a previously submitted plan: \$30;
 2. Plan review fees. A separate fee is charged for each system reviewed even if the systems are included in one submitted plan:
 - a. New installation of an automatic fire sprinkler system.
 - i. Servicing less than 10,000 square feet: \$375;

- ii. Servicing between 10,000 and 50,000 square feet: \$450;
 - iii. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$450; and
 - iv. For each floor level serviced above or below the ground-level floor: \$200;
 - b. Modification of an existing automatic fire sprinkler system.
 - i. System consisting of 1 to 20 sprinkler heads: \$75;
 - ii. System consisting of 21 to 50 sprinkler heads: \$100;
 - iii. System consisting of 51 to 100 sprinkler heads: \$250;
 - iv. System consisting of 101 to 500 sprinkler heads: \$300;
 - v. For each additional 100 sprinkler heads or portion of 100 sprinkler heads in excess of 500: \$100; and
 - vi. For each floor level serviced above or below the ground-level floor: \$200;
 - c. New installation or modification of an extinguishing system using clean agent, halon, dry chemical, carbon dioxide, or other extinguishing material:
 - i. Servicing up to 5,000 square feet: \$200; and
 - ii. For each 5,000 square feet or portion of 5,000 square feet serviced in excess of 5,000 square feet: \$50;
 - d. New installation of one automatic hood extinguishing system: \$150;
 - e. Modification of one existing automatic hood extinguishing system: \$75;
 - f. New installation of a fire pump:
 - i. For the first fire pump: \$250; and
 - ii. For each additional fire pump: \$150;
 - g. Modification of one existing fire pump: \$100;
 - h. New installation or modification of underground fire line and hydrants:
 - i. System consisting of up to 500 lineal feet: \$300; and
 - ii. For each 500 lineal feet or portion of 500 lineal feet in excess of 500 lineal feet: \$175;
 - i. New installation of standpipe system:
 - i. System consisting of up to four standpipes: \$200; and
 - ii. For each four standpipes or portion of four standpipes in excess of four: \$100;
 - j. Modification of standpipe system: \$50;
 - k. New installation of a fire alarm system:
 - i. Servicing up to 1,000 square feet: \$225;
 - ii. Servicing between 1,001 and 2,000 square feet: \$300;
 - iii. Servicing between 2,001 and 10,000 square feet: \$450;
 - iv. Servicing between 10,001 and 50,000 square feet: \$500;
 - v. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$200;
 - vi. For each floor level serviced above or below the ground-level floor: \$200; and
 - vii. For smoke detection throughout serviced area: 50% increase in fee calculated under subsections (A)(2)(k)(i) through (A)(2)(k)(vi); and
 - l. Modification of a fire alarm system by adding:
 - i. One to five fire alarm devices: \$100; and
 - ii. Six or more fire alarm devices: \$150;
 - 3. Permit issuance fees:
 - a. Fire protection permit: \$30 per system permitted;
 - b. Underground liquid fuel storage tank: \$164;
 - c. Tire storage: \$82;
 - d. Above-ground liquid fuel storage tank: \$164;
 - e. Pyrotechnics: \$164;
 - f. Special-event tent: \$164;
 - g. Hydrogen fuel cell: \$164;
 - h. Fair or trade show: \$164;
 - i. Explosives or blasting storage: \$164;
 - j. Compressed gases: \$164;
 - k. Cryogenics: \$164; and
 - l. Liquefied petroleum tank: \$164; and
 - 4. Re-inspection fees: If the State Fire Marshal has to conduct a re-inspection because an entity failed to cancel or was not prepared for a previously scheduled inspection or because the site failed the inspection, the State Fire Marshal shall charge a minimum of \$164 for the re-inspection. The State Fire Marshal shall increase the minimum re-inspection fee by \$82 for each 25 miles or portion of 25 miles in excess of the first 25 miles required to travel to and from the site of the re-inspection.
- B.** The State Fire Safety Committee shall authorize the State Fire Marshal to refund any fee paid under this Section if:
1. The permit holder applies for a refund on a form furnished by the State Fire Marshal no more than 180 days after the fee is paid; and
 2. The State Fire Marshal determines that the fee paid was erroneous.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3).

Editor's Note: Article 3, consisting of Sections R4-26-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997. Historical notes in this Article were corrected for clarification in Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2).

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

R4-36-301. Definitions

The following terms apply to the State Fire Code established in this Chapter:

1. Wherever the terms "fire chief" or "fire code official" are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal's designated representative, unless the context otherwise requires.
2. Wherever the terms "fire department" or "department of fire prevention" are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal's designated representative unless the context otherwise requires.
3. Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:
 - a. Boarding houses (non-transient) with 16 or fewer occupants

- b. Boarding houses (transient) with 10 or fewer occupants
- c. Building that do not contain more than four dwelling units
- d. Care facilities that provide accommodations for five or fewer persons receiving care
- e. Congregate living facilities (non-transient) with 16 or fewer occupants
- f. Congregate living facilities (transient) with 10 or fewer occupants
- g. Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the *International Residential Code*.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-301 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-302. Appendices

The International Fire Code (2012 Edition), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. Incorporated Appendices

Section 101.2.1 The following appendices are adopted as part of this Code:

- B: Fire-Flow Requirements for Buildings
- C: Fire Hydrant Locations and Distribution
- D102.1 or the minimum requirement of the local fire response agency
- D107.1 or the minimum requirement of the local building or subdivision authority
- E: Hazard Categories
- F: Hazard Ranking
- G: Cryogenic Fluids – Weight and Volume Equivalents
- H: Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions
- I: Fire Protection Systems – Noncompliant Conditions
- J: Building Information Sign

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-302 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-303. Permits

- A. The following time-frames are established for permits issued under the State Fire Code:
 1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
 2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.
 3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.
- B. The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.
- C. Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.
- D. Section 105.1.2 is modified to read: Types of permits. There shall be two types of permits as follows:
 1. Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.
 2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.
- E. Section 105.2.4, the first sentence is modified to read: The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.
- F. Section 105.3.1, the first sentence is modified to read: An operational permit shall remain in effect until reissued, renewed, or revoked or for 180 days.
- G. Section 105.3.3 is modified to read: Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-303 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-304. Inspections and Enforcement

- A. Section 108.1 is modified to read: Board of appeals established. To hear and decide appeals of orders, decisions, or

other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of appeal with no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.

- B. Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.
- C. Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.
- D. Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-304 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-305. General Precautions Against Fire

- A. Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.
- B. Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-305 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-306. Emergency Planning and Preparedness

Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-306 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1).

R4-36-307. Fire Service Features

- A. Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.
- B. Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-307 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-308. Building Services and Systems

- A. Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.
- B. Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.
- C. Sections 5003.3.1 and 5003.3.1.4 replace "fire code official" with "fire department."

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-308 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-309. Fire Protection Systems

Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-310. Explosives and Fireworks

Section 5601.1.3 is modified to read: Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited. Exceptions:

1. Storage and handling of fireworks as allowed in Section 5604.
2. Manufacture, assembly and testing of fireworks as allowed in Section 5605.
3. The use of fireworks for fireworks displays as allowed in Section 5608.
4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by A.R.S. Title 36, Chapter 13, Article 1 or local ordinances and regulations, provided the fireworks comply with 16 CFR Parts 1500 and 1507 and 49 CFR Parts 100-185, for consumer fireworks.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-311. Repealed**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Section repealed by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS**R4-36-401. Material Incorporated by Reference**

As required by A.R.S. § 36-1609(A), the State Fire Marshal incorporates by this reference NFPA 1124, Code for the Manufacture,

Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, 2013 edition as published August 29, 2012, which is published by the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02169-7471 and is available from NFPA at www.nfpa.org and the Office of the State Fire Marshal. The incorporated material does not include a later amendment or edition but is modified as specified in R4-36-402.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1). Amended by final rulemaking at 21 A.A.R. 571, effective June 7, 2015 (Supp. 15-2).

R4-36-402. Modification of NFPA 1124

- A. Whenever the term "Consumer fireworks" is used in NFPA 1124, substitute the term "Consumer firework" as defined at A.R.S. § 36-1601(1).
- B. Whenever the term "Display fireworks" is used in NFPA 1124, substitute the term "Display firework" as defined at A.R.S. § 36-1601(2).
- C. Whenever the term "Fireworks" is used in NFPA 1124, substitute the term "Fireworks" as defined at A.R.S. § 36-1601(3).

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

R4-36-403. Civil Penalties

- A. Under the authority provided by A.R.S. § 36-1610, the State Fire Marshal shall impose a civil penalty of \$1,000 for each incident of prohibited use of fireworks on state land when the State Fire Marshal determines that the incident of prohibited use of fireworks posed a risk of harm to life or property.
- B. As used in A.R.S. § 36-1610 and subsection (A), an incident of prohibited use of fireworks means the combustion, explosion, deflagration, or detonation of a single firework device.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

37-1383. Powers and duties; arson investigators

A. Under the authority and direction of the state forester, the assistant director of the office of the state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal shall:

1. Assist in the enforcement of state laws and ordinances of cities and counties relating to fire prevention and fire protection.
2. Adopt by rule a state fire code establishing minimum standards for:
 - (a) Safeguarding life and property from fire and fire hazards.
 - (b) The prevention of fires and alleviation of fire hazards.
 - (c) The storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials.
 - (d) The installation, maintenance and use of fire escapes, fire protection equipment, fire alarm systems, smoke detectors and fire extinguishing equipment.
 - (e) The means and adequacy of fire protection and exit in case of fire in places in which numbers of persons work, live or congregate, excluding family dwellings that have fewer than five residential dwelling units.
 - (f) Other matters relating to fire prevention and control that are considered necessary by the office of the state fire marshal.
3. Adopt rules and a schedule of fees for permits, plan submissions, plan reviews and reinspections that are payable by persons regulated under this article.
4. Adopt rules for the allocation of monies from the arson detection reward fund established by section 37-1387. The rules shall be consistent with the purposes set forth in section 37-1387 and shall promote the effective and efficient use of the fund monies.
5. Enforce compliance with the fire code adopted pursuant to this subsection throughout this state except in any city having a population of one hundred thousand persons or more that has in effect a nationally recognized fire code, whether modified or unmodified, and that has enacted an ordinance to assume such jurisdiction from the office of the state fire marshal. Such cities do not have authority that supersedes and are not exempt from the state fire code established pursuant to this subsection in state or county owned buildings wherever located throughout the state.
6. Cooperate and coordinate with other state agencies in the administration of the state fire code.
7. Establish a regularly scheduled fire safety inspection program for all state and county owned public buildings and all public and private school buildings wherever located throughout the state, except for private school buildings in cities with a population of one hundred thousand or more persons.
8. Inspect as necessary all other occupancies located throughout this state, except family dwellings having fewer than five residential dwelling units and occupancies located in cities with a population of one hundred thousand or more persons.
9. At the written request of county or municipal authorities, make and provide to them a written report of the examination made by the office of the state fire marshal of any fire within their jurisdiction.
10. Administer the arson detection reward fund established by section 37-1387.

B. All plans and specifications for new construction, remodeling, alterations and additions for state, county and public school buildings and grounds shall be submitted to the state forester for review and approval by the assistant director of the office of the state fire marshal or as authorized to a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal before construction. The plans and specifications shall be reviewed and approved or disapproved within sixty days after submission. Construction shall not commence until the plans have been approved and a permit has been issued.

C. Under the authority and direction of the state forester, the assistant director of the office of state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal may:

1. Conduct or participate in investigations of causes, origins and circumstances of fires, including cases of possible arson.
2. Prescribe a uniform system of reporting fires and their causes and effects.
3. Provide and coordinate training in firefighting and fire prevention and cooperate with educational institutions to provide and further such training.
4. Impound necessary evidence in conjunction with investigations of causes, origins and circumstances of fires if that evidence might be lost, destroyed or otherwise altered if not impounded.
5. Employ specialized testing services to evaluate evidence and conditions involved in fire investigations.
6. Designate certain members of the office of the state fire marshal's staff or a deputy fire marshal or an assistant fire inspector as arson investigators.

D. The primary duty of investigators designated pursuant to subsection C, paragraph 6 of this section is the investigation, detection and apprehension of persons who have violated or are suspected of violating any provision of title 13, chapter 17. A person designated as an arson investigator, while engaged in arson investigation in this state, possesses and may exercise law enforcement powers of peace officers of this state. This subsection does not grant any powers of peace officers of this state to arson investigators other than those necessary for the investigation, detection and apprehension authority granted by this subsection. Any individual designated as an arson investigator shall have law enforcement training under section 41-1822.

NOTE: *This 5YRR was previously considered at the September 29, 2020 Study Session and October 6, 2020 Council Meeting. At the October 6, 2020 Council Meeting, the Council voted to return a portion of the report related to the proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking by December 2023. The Council directed DES to revise the proposed course of action timeframe and re-submit that portion of the 5YRR by October 27, 2020. The revised portion of the 5YRR with an updated proposed course of action timeframe was submitted on October 22, 2020 and considered at the November 24, 2020 Study Session and December 1, 2020 Council Meeting where it was tabled for consideration until the December 29, 2020 Study Session and January 5, 2020 Council Meeting. A revised 5YRR with an updated proposed course of action time frame is included in these final materials for your reference.*

DEPARTMENT OF ECONOMIC SECURITY (F20-0907)
Title 6, Chapter 6, All Articles, Department of Economic Security



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 1, 2020

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

FROM: Council Staff

DATE: November 9, 2020

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 6, All Articles, Department of Economic Security

Summary

This Five-Year Review Report (5YRR) was previously considered at the August 25, 2020 Study Session and September 1, 2020 Council Meeting. At the September 1, 2020 Council Meeting, the Council voted to table consideration of this report to the September 29, 2020 Study Session and October 6, 2020 Council Meeting to allow the Department of Economic Security (Department) to revise its proposed course of action timeframe.

The Department revised the proposed course of action deadlines and resubmitted the report. At the October 6, 2020 Council Meeting, the Council voted to approve the majority of the Department's report. However, due to continuing concerns over the length of time for the proposed course of action to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking by December 2023, the Council voted to return the portion of the report related to the proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23. The Council directed the Department to revise the proposed course of action timeframe for those Articles and re-submit that portion of the 5YRR by October 27, 2020. The revised portion of the 5YRR with an updated proposed course of action timeframe to amend Articles 6, 8, 12, 16, 22, and 23 was submitted by the Department on October 22, 2020.

The October 22, 2020 report was considered at the November 24, 2020 Study Session and December 1, 2020 Council Meeting. Therein, the Department proposed to request a moratorium exception to proceed with regular rulemaking to amend the Articles by March 2022 and file the Notices of Docket Opening by August 2022 and start the stakeholder engagement process to draft amendments to the rules. The Department maintained the December 2023 deadline to submit the rulemaking package to the Council.

Given the continued concerns regarding the December 2023 deadline, the Council voted at the December 1, 2020 Council Meeting to table consideration of the report to the December 29, 2020 Study Session and January 5, 2021 Council Meeting. The Department has submitted a further revised report in the interim which is included in the final materials for the Council's consideration.

As a reminder, this 5YRR from the Department related to all Articles in Title 6, Chapter 6 regarding developmental disabilities. The Division of Developmental Disabilities (DDD) within the Department provides support and services for eligible people with autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

The Articles reviewed included the following:

- Article 1. General Provisions
- Article 3. Eligibility for Developmental Disabilities Services
- Article 4. Application
- Article 6. Program Services
- Article 8. Programmatic Standards and Contract Monitoring for Community Residential Settings
- Article 9. Managing Inappropriate Behaviors
- Article 10. Child Developmental Foster Home License
- Article 11. Adult Developmental Home License
- Article 12. Cost of Care Portion
- Article 13. Coordination of Benefits; Third-Party Payments
- Article 15. Standards for Certification of Home and Community-Based Service (HCBS) Providers
- Article 16. Abuse and Neglect
- Article 18. Administrative Review
- Article 20. Contracts
- Article 21. Division Procurement and Rate Setting - Qualified Vendors
- Article 22. Appeals and Hearings
- Article 23. Deemed Status

In the previous 5YRR for these rules , approved by the Council on December 15, 2015, the Department proposed changes to all Articles in Chapter 6. The Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. The Department published a Notice of Proposed Rulemaking to amend Article 4 on January 3, 2020. The amendments to the remaining Articles have not been completed. The Department noted that progress on amendments to the Articles in Chapter 6 is balanced against competing priorities primarily related to Medicaid funding. Specifically, between 2015 and 2020, the Department indicates that implementing continuing changes in Medicaid requirements impacting the Department has a high priority in order to avoid jeopardizing federal funding.

Proposed Action

With regards to the updated proposed course of action to amend Articles 6, 8, 12, 16, 22, and 23 by regular rulemaking, the Department plans to submit a Notice of Final Rulemaking to the Council by December 2022. It was also indicated by the Department that this rulemaking has been added to DDD's strategic plan and is a priority of the Department.

Conclusion

In light of the modified proposed course of action timeframe in response to Council concerns, Council staff recommends approval of this report.

-Preface-

Department of Economic Security

Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule’s effectiveness, clarity, conciseness, and understandability. The reports also describe the agency’s proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor’s Regulatory Review Council.

A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency’s website.

**Department of Economic Security
Title 6, Chapter 6
Five-Year Review Report**

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 36-554(A)(6), 36-554(A)(11), 36-554(C)(6), 36-557(O), 36-557(P), 36-560(A), 36-561(B), 36-562(C), 36-562(G), 36-562(M), 36-563(C), 36-565(D), 36-568, 36-592(B), 36-595(B), 36-596.01(G)

2. The objective of each rule:

Rule	Objective
R6-6-101	The objective of this rule is to define terms used in Chapter 6.
R6-6-102	The objective of this rule is to guarantee the rights of clients when services are being provided.
R6-6-103	The objective of this rule is to designate a confidentiality officer who administers and supervises the use and maintenance of all personally identifiable information.
R6-6-104	The objective of this rule is to identify individuals or titles authorized to access personally identifiable information and where it is kept.
R6-6-105	The objective of this rule is to ensure personally identifiable information is only released with the consent of the client or responsible person.
R6-6-106	The objective of this rule is to ensure an employee of the Division (DDD) who makes an unlawful disclosure of personally identifiable information is subject to disciplinary action or dismissal.
R6-6-107	The objective of this rule is to state the client's right to live in the least restrictive environment.
R6-6-108	The objective of this rule is to ensure a written plan for meeting potential emergencies and disasters is posted in non-licensed settings.
R6-6-301	The objective of this rule is to define terms used in Article 3.
R6-6-302	The objective of this rule is to establish general criteria regarding eligibility for DDD services.
R6-6-303	The objective of this rule is to identify the diagnoses used to determine eligibility for Division services.
R6-6-304	The objective of this rule is to explain the process for eligibility under Arizona Long-term Care System (ALTCS).

R6-6-305	The objective of this rule is to require the Support Coordinator, along with the Planning Team, to complete a Planning Document to document any necessary supports and services when the Department determines an individual is eligible and enrolls the individual in the program.
R6-6-306	The objective of this rule is to clarify that in an emergency, the Department may provide DDD services to an individual who has been enrolled in the program without a Planning Document.
R6-6-307	The objective of this rule is to outline when the Department may redetermine eligibility for the program.
R6-6-308	The objective of this rule is to enumerate the responsibilities of a member.
R6-6-309	The objective of this rule is to identify under what circumstances a member may be terminated from DDD services, and time-frames for notification of termination from DDD services.
R6-6-401	The objective of this rule is to define terms used in Article 4.
R6-6-402	The objective of this rule is to describe the application process for DDD services, the information required on the application, and what happens if an application is incomplete.
R6-6-403	The objective of this rule is to identify the required documents for lawful presence, residency, and health insurance coverage while applying for admission to services.
R6-6-404	The objectives of this rule are to require DDD to refer individuals with developmental disabilities who may be eligible for ALTCS to the Arizona Health Care Cost Containment System (AHCCCS) to determine eligibility under ALTCS.
R6-6-601	The objective of this rule is to clarify that an assigned case manager will assist the client and the client's family in all aspects of the service delivery system.
R6-6-602	The objective of this rule is to describe how appropriate services for the individual and family are determined and requires the Individual Service and Program Plan (ISPP) team to develop an ISPP for the client based on an evaluation.
R6-6-603	The objective of this rule is to describe the client's assignment to appropriate services and describes the circumstances in which the client may be assigned to a waiting list when appropriate services are not available.
R6-6-604	The objective of this rule is to clarify how often the case manager and the ISPP team will review the client's ISPP.

R6-6-605	The objective of this rule is to describe the right of responsible persons to request a transfer or change to services and the responsibility of DDD to review each request.
R6-6-606	The objective of this rule is to explain that admission or assignment of any client to a program, service, or facility requires consent of the responsible person and, if not obtained, those services shall be terminated.
R6-6-801	The objective of this rule is to describe the applicability of Article 8 to community residential settings with the exception to developmental homes.
R6-6-802	The objective of this rule is to describe the roles of the licensee and DDD in complying with and determining compliance with A.R.S. Title 36, Chapter 5.
R6-6-803	The objective of this rule is to explain the types of incidents that must be reported to DDD immediately; the requirement for the licensee to cooperate in investigations; and the requirement for the licensee to maintain staff-to-client ratios that conform to the contract.
R6-6-804	The objective of this rule is to describe the rights of clients who live in community residential settings.
R6-6-805	The objective of this rule is to describe the requirements for developing and amending an ISPP.
R6-6-806	The objective of this rule is to explain the requirements for obtaining consent for emergency medical care, documentation of health status, medical records, medications, medication administration, use of protective restraints, nutrition, storage of toxins, and fencing of bodies of water for community residential settings.
R6-6-807	The objective of this rule is to describe what programmatic records a licensee shall maintain in a client's place of residence and the requirement to ensure that the records are legible, typed or written in ink, dated, and properly corrected, as necessary.
R6-6-808	The objective of this rule is to describe the qualifications, training, and responsibilities of staff, and to explain the documentation that a licensee shall maintain.
R6-6-809	The objective of this rule is to describe the policies and procedures that the licensee must develop and implement to address incidents that occur in the operation of the setting.

R6-6-810	The objective of this rule is to explain that a licensee shall obtain consent from the responsible person before releasing personally identifiable information for a client residing in a community residential setting.
R6-6-811	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 8 and provide how the licensee otherwise intends to meet the requirements of that rule.
R6-6-901	The objective of this rule is to describe the applicability of Article 9 to all programs operated, licensed, certified, supervised or financially supported by DDD, as well as to all habilitation programs.
R6-6-902	The objective of this rule is to establish limits on the use of certain behavioral intervention techniques.
R6-6-903	The objective of this rule is to describe the responsibilities and composition of the Program Review Committee.
R6-6-904	The objective of this rule is to describe the role of the ISPP team.
R6-6-905	The objective of this rule is to establish the standards for monitoring behavior treatment plans.
R6-6-906	The objective of this rule is to describe the minimum training requirements for any person involved in the use of a behavior treatment plan.
R6-6-907	The objective of this rule is to describe the sanctions for non-compliance with Article 9.
R6-6-908	The objective of this rule is to describe both the limits and requirements for physical management of a client in an emergency situation.
R6-6-909	The objective of this rule is to describe the requirements for how behavior-modifying medications shall be prescribed and administered.
R6-6-1001	The objective of this rule is to describe the requirements for a person applying for a child developmental foster home license.
R6-6-1002	The objective of this rule is to describe the criteria for issuing an initial license and the length of time a license is effective.
R6-6-1003	The objective of this rule is to establish the requirements and criteria to renew a child developmental foster home license.
R6-6-1004	The objective of this rule is to establish the criteria for a provisional license for a child developmental foster home and the length of time a provisional license is effective.

R6-6-1004.01	The objective of this rule is to establish the time-frame for granting or denying a child developmental foster home license.
R6-6-1004.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1004.03	The objective of this rule is to explain the contents of a complete application package for an initial child developmental foster home license.
R6-6-1004.04	The objective of this rule is to explain the contents of a complete child developmental foster home license renewal application package.
R6-6-1004.05	The objective of this rule is to explain the contents of a complete request for an amended child developmental foster home license.
R6-6-1005	The objective of this rule is to describe training requirements for a child developmental foster home licensee and applicant.
R6-6-1006	The objective of this rule is to describe the responsibilities of a licensee in a child developmental foster home.
R6-6-1007	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.
R6-6-1008	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, and safe sleeping arrangements for children in a child developmental foster home.
R6-6-1009	The objective of this rule is to describe the types of events a licensee shall report to DDD or placing agency.
R6-6-1010	The objective of this rule is to describe a licensee's recordkeeping requirements in a child developmental foster home.
R6-6-1011	The objective of this rule is to prescribe the health and safety standards with which a child developmental foster home shall comply.
R6-6-1012	The objective of this rule is to establish standards for a licensee who provides transportation to foster children.
R6-6-1013	The objective of this rule is to establish dual licensure or certification requirements for foster parents residing off-reservation and licensed by a tribal jurisdiction.
R6-6-1014	The objective of this rule is to establish the rights of clients in a child developmental foster home.

R6-6-1015	The objective of this rule is to explain that a licensee may request an exemption from a rule in Article 10 and explain how the licensee otherwise intends to meet the requirements of that rule.
R6-6-1016	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of a child developmental foster home and to specify the minimum frequency of inspections and monitoring.
R6-6-1017	The objective of this rule is to describe the process for receiving and investigating complaints about a child developmental foster home.
R6-6-1018	The objective of this rule is to describe under what conditions a child developmental foster home license may be denied, suspended, or revoked.
R6-6-1019	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for a child developmental foster home is denied, suspended, or revoked.
R6-6-1101	The objective of this rule is to list the requirements for a person applying for an adult developmental home license.
R6-6-1102	The objective of this rule is to describe the criteria for issuing an initial license and to set the length of time a license is effective.
R6-6-1103	The objective of this rule is to establish the requirements and criteria to renew an adult developmental home license.
R6-6-1104	The objective of this rule is to establish the criteria for a provisional license for an adult developmental home license and the length of time a provisional license is effective.
R6-6-1104.01	The objective of this rule is to establish the time frame for granting or denying an adult developmental home license.
R6-6-1104.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1104.03	The objective of this rule is to explain the contents of a complete application package for an initial adult developmental home license.
R6-6-1104.04	The objective of this rule is to list the required contents of a complete adult developmental home license renewal application package.
R6-6-1104.05	The objective of this rule is to list the required contents of a complete request for an amended adult developmental home license.

R6-6-1105	The objective of this rule is to describe the training requirements for an adult developmental home licensee and applicant.
R6-6-1106	The objective of this rule is to describe the responsibilities of a licensee in an adult developmental home.
R6-6-1107	The objective of this rule is to require a licensee to comply with behavior management, as specified in Article 9 of this Chapter, establish rules for behavior, provide appropriate discipline, and identify and report behavioral issues to DDD.
R6-6-1108	The objective of this rule is to describe the requirement of a licensee to provide appropriate, comfortable, private, and safe sleeping arrangements for adult clients in an adult developmental home.
R6-6-1109	The objective of this rule is to describe the types of events and incidents in an adult developmental home a licensee shall report to DDD.
R6-6-1110	The objective of this rule is to describe the records for each adult a licensee shall maintain in an adult developmental home.
R6-6-1111	The objective of this rule is to prescribe the health and safety standards with which an adult developmental home shall comply.
R6-6-1112	The objective of this rule is to define the standards for adult developmental home providers who supply transportation.
R6-6-1113	The objective of this rule is to establish dual licensure or certification requirements for an adult developmental home provider licensed by another jurisdiction.
R6-6-1114	The objective of this rule is to establish the rights of clients in an adult developmental home.
R6-6-1115	The objective of this rule is to explain that an adult developmental home licensee or applicant may request an exemption from a rule in Article 11 and how the licensee or applicant otherwise intends to meet the requirements of that rule.
R6-6-1116	The objective of this rule is to describe the requirement for a licensee to cooperate in home inspections and monitoring of an adult developmental home and to specify the minimum frequency of inspections and monitoring.
R6-6-1117	The objective of this rule is to describe the process for receiving and investigating complaints about an adult developmental home.
R6-6-1118	The objective of this rule is to describe under what conditions an adult developmental home license may be denied, suspended, or revoked.

R6-6-1119	The objective of this rule is to describe the appeal rights of a licensee or applicant when a license for an adult developmental home is denied, suspended, or revoked.
R6-6-1201	The objective of this rule is to prescribe the cost of care contribution requirements for clients, parents of minor clients, and trusts, estates, and annuities of which a client is a beneficiary.
R6-6-1202	The objective of this rule is to describe how DDD determines a client's cost of care portion for services.
R6-6-1203	The objective of this rule is to describe how DDD determines the client's cost for services based on the client's income from an estate, trust, or annuity.
R6-6-1204	The objective of this rule is to describe how DDD determines the cost of care portion for clients receiving residential services.
R6-6-1205	The objective of this rule is to describe the method DDD uses for collecting financial information, billing, and referrals for collections regarding non-payment.
R6-6-1206	The objective of this rule is to explain the review and appeal process for the cost of care portion.
Article 12, Appendix A	The objective of Article 12, Appendix A is to establish the cost of care portion for which a responsible person is liable based on the cost of services, monthly family income, and family size.
R6-6-1301	The objective of this rule is to describe the health insurance information required to complete an initial application or an application for redetermination for eligibility.
R6-6-1302	The objective of this rule is to describe the requirements for the assignment of rights to benefits.
R6-6-1303	The objective of this rule is to describe the process for collecting third party insurance reimbursements.
R6-6-1304	The objective of this rule is to describe the process for monitoring service providers for compliance with Article 13.
R6-6-1305	The objective of this rule is to describe the process a service provider shall use to notify DDD of the need for a lien.
R6-6-1501	The objective of this rule is to define terms used in Article 15.
R6-6-1502	The objective of this rule is to clarify that the rules in Article 15 apply to Home and Community-based Service (HCBS) providers.
R6-6-1503	The objective of this rule is to describe the requirements for a HCBS certificate.

R6-6-1504	The objective of this rule is to explain how to become certified as a HCBS provider and establish the documentation required for application to become HCBS certified.
R6-6-1504.01	The objective of this rule is to establish the time-frames for granting or denying a HCBS certificate.
R6-6-1504.02	The objective of this rule is to describe the administrative completeness and substantive review process.
R6-6-1504.03	The objective of this rule is to explain the contents of a complete application package for an initial HCBS certificate.
R6-6-1504.04	The objective of this rule is to explain the contents of a complete application package for a HCBS renewal certificate.
R6-6-1504.05	The objective of this rule is to explain the contents of a complete request for an amended HCBS certificate.
R6-6-1505	The objective of this rule is to establish health and safety standards a HCBS provider shall provide in a residence or facility where HCBS services are to be provided.
R6-6-1506	The objective of this rule is to establish fingerprint requirements for HCBS applicants.
R6-6-1507	The objective of this rule is to establish the requirements to renew a HCBS certificate.
R6-6-1508	The objective of this rule is to describe DDD's requirements when issuing an initial or renewal HCBS certificate.
R6-6-1509	The objective of this rule is to identify how long a HCBS certificate is valid.
R6-6-1510	The objective of this rule is to describe the requirements for amending a HCBS certificate.
R6-6-1511	The objective of this rule is to explain the requirements a service provider shall maintain during the term of a HCBS certificate.
R6-6-1512	The objective of this rule is to describe the audit process to review provider records and to ensure compliance with HCBS rules.
R6-6-1513	The objective of this rule is to describe how complaints against a HCBS service provider are registered and the subsequent action that may be taken.
R6-6-1514	The objective of this rule is to describe under what conditions a HCBS certificate may be denied, suspended, or revoked.

R6-6-1515	The objective of this rule is to establish the conditions under which a corrective action plan may be required to enforce compliance with these rules.
R6-6-1516	The objective of this rule is to explain an applicant's or service provider's right to an administrative review and appeal rights when a HCBS certificate is denied, revoked, or suspended.
R6-6-1517	The objective of this rule is to identify the types of incidents that a HCBS provider shall report to DDD while a client is in the direct care of a HCBS provider.
R6-6-1518	The objective of this rule is to explain that HCBS providers shall observe the rights of clients listed in A.R.S. § 36-551.01 and A.A.C. R6-6-102.
R6-6-1519	The objective of this rule is to describe records a provider shall maintain for compliance with HCBS rules.
R6-6-1520	The objective of this rule is to describe the basic qualifications, training, and responsibilities of HCBS providers.
R6-6-1521	The objective of this rule is to describe additional qualifications for attendant care services.
R6-6-1522	The objective of this rule is to describe additional qualifications for day treatment and training services.
R6-6-1523	The objective of this rule is to describe additional qualifications for habilitation services.
R6-6-1524	The objective of this rule is to describe additional qualifications for home health aide services.
R6-6-1525	The objective of this rule is to describe additional qualifications for home health nurse services.
R6-6-1526	The objective of this rule is to describe additional qualifications for hospice services.
R6-6-1527	The objective of this rule is to describe additional qualifications for housekeeping services.
R6-6-1528	The objective of this rule is to describe additional qualifications for occupational therapy services.
R6-6-1529	The objective of this rule is to describe additional qualifications for personal care services.
R6-6-1530	The objective of this rule is to describe additional qualifications for physical therapy services.

R6-6-1531	The objective of this rule is to describe additional qualifications for respiratory therapy services.
R6-6-1532	The objective of this rule is to describe additional qualifications for respite services.
R6-6-1533	The objective of this rule is to describe additional qualifications for speech/hearing therapy services.
R6-6-1601	The objective of this rule is to establish reporting procedures for an employee of a service provider regarding allegations of abuse and neglect.
R6-6-1602	The objective of this rule is to describe how reports of abuse and neglect are investigated.
R6-6-1603	The objective of this rule is to describe requirements for service providers to refer a client for a medical evaluation when there is suspected abuse or neglect.
R6-6-1801	The objective of this rule is to define terms used in Article 18.
R6-6-1802	The objective of this rule is to describe the applicability of Article 18.
R6-6-1803	The objective of this rule is to explain to whom DDD needs to give written notice when taking action and to specify the contents of the notice.
R6-6-1804	The objective of this rule is to describe who may file a request for an Administrative Review.
R6-6-1805	The objective of this rule is to explain the process for filing a request for an Administrative Review.
R6-6-1806	The objective of this rule is to describe contents that shall be included in a request for an Administrative Review.
R6-6-1807	The objective of this rule is to explain when DDD shall deny a request for an Administrative Review.
R6-6-1808	The objective of this rule is to describe the time-frame for completing an Administrative Review.
R6-6-1809	The objective of this rule is to explain the content of an Administrative Decision.
R6-6-1810	The objective of this rule is to explain that DDD shall not authorize services until a final administrative or judicial decision of an Administrative Review establishes eligibility.
R6-6-1811	The objective of this rule is to describe conditions under which DDD shall continue authorizing a Member's service during an Administrative Review.
R6-6-1812	The objective of this rule is to explain when HCBS Certificates shall be continued during an Administrative Review Process.

R6-6-1813	The objective of this rule is to explain a Requestor's appeal rights under Article 22 of this Chapter.
R6-6-2001	The objective of this rule is to define terms used in Article 20.
R6-6-2002	The objective of this rule is to describe DDD's contracting process for procuring goods and services.
R6-6-2003	The objective of this rule is to describe DDD's process when there is an insufficient response to a competitive solicitation.
R6-6-2004	The objective of this rule is to describe the process DDD shall use when DDD identifies an immediate or emergency need for service and current providers cannot meet the service needed.
R6-6-2005	The objective of this rule is to describe the Acute Care solicitation process and the information that providers shall include in a request for proposal.
R6-6-2006	The objective of this rule is to describe the process for evaluating Acute Care proposals, and the circumstances under which a proposal may be cancelled or rejected.
R6-6-2007	The objective of this rule is to describe the circumstances under which DDD shall award an Acute Care contract.
R6-6-2008	The objective of this rule is to describe the circumstances under which a protest regarding an Acute Care contract proposal or award may be filed and how a protest is resolved.
R6-6-2009	The objective of this rule is to describe how DDD recruits individual providers for Acute Care services in a geographic area without a health plan.
R6-6-2010	The objective of this rule is to describe the process DDD shall follow when statute, regulation, rules, or program changes occur.
R6-6-2011	The objective of this rule is to describe record retention for Acute Care services procurement.
R6-6-2101	The objective of this rule is to define terms used in Article 21.
R6-6-2102	The objective of this rule is to describe the applicability of Article 21.
R6-6-2103	The objective of this rule is to describe the Qualified Vendor application process.
R6-6-2104	The objective of this rule is to describe the criteria required for Qualified Vendor Agreements.
R6-6-2105	The objective of this rule is to describe the circumstances under which DDD shall enter a Qualified Vendor Agreement with an applicant.

R6-6-2106	The objective of this rule is to explain that DDD shall maintain a list of services as a means of providing information to service providers and interested parties.
R6-6-2107	The objective of this rule is to explain how a consumer or a consumer's representative shall select a service provider from the Qualified Vendor Directory, Individual Independent Provider list, or by requesting DDD post a Vendor Call for Services on the DDD website.
R6-6-2108	The objective of this rule is to describe DDD's emergency procurement procedures.
R6-6-2109	The objective of this rule is to describe consumer choice and the process for selecting and changing vendors.
R6-6-2110	The objective of this rule is to describe procedures for DDD service authorization, payment rates, reimbursement, non-reimbursement, and Qualified Vendor notification requirements for necessary emergency services.
R6-6-2111	The objective of this rule is to describe the basis for terminating a Qualified Vendor Agreement and the criteria for removing providers from the Qualified Vendor List.
R6-6-2112	The objective of this rule is to grant the DDD Assistant Director authority to totally or partially cancel a Request for Qualified Vendor Applications or a Vendor Call for Services, and to give the rationale for such action if it is deemed to be in the state's best interest.
R6-6-2114	The objectives of this rule are to establish a rate structure for reimbursing providers of community developmental disability services; describe the process to annually review the adequacy of rates; describe the process to phase in new rates; and describe the process for negotiating rates.
R6-6-2115	The objective of this rule is to describe the problem solving and appeal process for protests by applicants and Qualified Vendors regarding posting of requests for services and denials of applications in whole or in part.
R6-6-2116	The objectives of this rule are to: describe the process for resolving payment disputes by mutual agreement; grant the Department procurement officer the authority to settle claims; provide timelines for decisions; and explain the appeal process and procedures for unresolved claims regarding Qualified Vendors.
R6-6-2117	The objective of this rule is to define the process for handling controversies involving state claims against a Qualified Vendor.
R6-6-2118	The objective of this rule is to explain how hearings on appeals of claims decisions shall be conducted as contested cases under A.R.S. Title 41, Chapter 6, Article 1.

R6-6-2119	The objective of this rule is to explain a protester's right to seek relief through the Superior Court after receiving a decision from the Department's Office of Appeals.
R6-6-2201	The objective of this rule is to describe who may file an appeal and to specify the timelines for filing an appeal.
R6-6-2202	The objectives of this rule are to explain the process and requirements for filing an appeal.
R6-6-2203	The objective of this rule is to explain how service on a party is accomplished.
R6-6-2204	The objective of this rule is to explain the method for calculating days as referenced in Article 22.
R6-6-2205	The objective of this rule is to explain who may represent an appellant at a hearing.
R6-6-2206	The objective of this rule is to explain that reduction or termination of services may be done prior to a hearing only as provided by federal and state law, regulations, or rules.
R6-6-2207	The objective of this rule is to describe hearing locations, scheduling responsibilities, and timelines for providing a notice of hearing.
R6-6-2208	The objective of this rule is to describe the process and specify a timeline for changing hearing officers.
R6-6-2209	The objective of this rule is to explain what occurs if a party fails to appear for a hearing and to allow rescheduling under certain circumstances.
R6-6-2210	The objective of this rule is to require the Division to prepare a prehearing summary and to provide timelines for submission.
R6-6-2211	The objective of this rule is to grant authority to the hearing officer to subpoena witnesses or documents.
R6-6-2212	The objectives of this rule are to: describe the way a hearing shall be conducted; allow for a closed hearing if in the best interest of the parties; and specify the duties of the hearing officer regarding the proceeding.
R6-6-2213	The objective of this rule is to explain the method for making a hearing decision, the impact of a decision, and further appeal rights.
R6-6-2214	The objective of this rule is to establish the criteria for terminating an appeal.
R6-6-2215	The objective of this rule is to describe how an appeal of a hearing officer's decision is filed and to allow the Department to request a review by the Appeals Board before a decision is made final.

R6-6-2216	The objective of this rule is to explain how an appeal of an AHCCCS hearing officer's decisions are filed and to provide a timeline for filing.
R6-6-2301	The objective of this rule is to define terms used in Article 23.
R6-6-2302	The objective of this rule is to establish the criteria for deemed status eligibility.
R6-6-2303	The objective of this rule is to establish the Department's time frames for reviewing an application for deemed status.
R6-6-2304	The objective of this rule is to describe the responsibilities of a provider with deemed status and how deemed status may be renewed.
R6-6-2305	The objective of this rule is to describe the expiration date of deemed status and how deemed status may be renewed.
R6-6-2306	The objective of this rule is to describe the responsibility of a provider with deemed status to report changes in the provider's accreditation.
R6-6-2307	The objective of this rule is to explain that deemed status is not assignable or transferable.
R6-6-2308	The objective of this rule is to describe the programmatic and contractual monitoring requirements of a provider with deemed status.
R6-6-2309	The objective of this rule is to explain when the Department shall revoke deemed status of a provider.
R6-6-2310	The objective of this rule is to describe the process and time-frames for a provider seeking administrative review of the Department's decision to revoke a provider's deemed status.
R6-6-2311	The objective of this rule is to explain judicial review rights for any person adversely affected by an Appeals Board decision.

3. Are the rules effective in achieving their objectives?

Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-6-101	R6-6-101 is ineffective because it is missing definitions that apply across all Articles, including "member" and "support coordinator".
R6-6-105	R6-6-105 is ineffective because it does not conform to relevant requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA) as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.

R6-6-106	R6-6-106 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-801	R6-6-801 is ineffective because applicability does not include group home settings.
R6-6-802	R6-6-802 is ineffective because the Department does not have the authority to enforce corrective action for group homes through licensing. The licensing authority for Division group homes is the Arizona Department of Health Services (ADHS). The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-803	R6-6-803 is ineffective because reporting of incidents does not include reporting of incidents by email.
R6-6-808	R6-6-808 is ineffective because it references expired Article 7 requirements for meeting potential emergencies and disasters.
R6-6-809	R6-6-809 is ineffective because it does not address the requirement in A.R.S. § 36-554(A)(7) to inform parents or guardians in writing of the complaint handling procedure; A.R.S. § 36-554(A)(6) requires a rule outlining a procedure for handling complaints about community residential settings.
R6-6-810	R6-6-810 is ineffective because it does not conform to relevant requirements of HIPAA as specified in (Public Law 107-191 Statutes 1936), 45 CFR parts 160 and 164.
R6-6-903	R6-6-903 is ineffective because it contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1001	R6-6-1001(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards. R6-6-1001(C) is ineffective because the wording pertaining to Department of Child Safety (DCS) and Adult Protective Service (APS) checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1002	R6-6-1002 is ineffective because there is no mention of what criteria may be considered when determining the bed capacity of a home.
R6-6-1003	R6-6-1003(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.

R6-6-1004	R6-6-1004 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a provisional license at three months.
R6-6-1004.02	R6-6-1004.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6- 1004.03	R6-6-1004.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits the home study to DDD on the applicant's behalf.
R6-6-1011	R6-6-1011(D) and R6-6-1011(K) are ineffective because they refer to an inspection by the Department of Health Services which is not reflective of current practice.
R6-6-1013	R6-6-1013 is not effective because it does not reflect the Child Developmental Certified home provisions outlined in A.R.S. § 36-593.01.
R6-6-1101	R6-6-1101(B) is ineffective because the wording pertaining to fingerprinting is obsolete. The rule makes no mention of fingerprint clearance cards. R6-6-1101(C) is ineffective because the wording pertaining to DCS and APS checks is obsolete. The rule requires checks of CPS and APS "referral files" with no mention of the registries.
R6-6-1102	R6-6-1102 is ineffective because there is no mention of what criteria may be considered when determining the bed capacity of a home.
R6-6-1103	R6-6-1103(B)(3) is ineffective because it requires a criminal check every three years, rather than every six years per the fingerprint clearance card system.
R6-6-1104	R6-6-1104 is not effective due to a conflict with A.R.S. § 36-593. While the rule states that a provisional license is valid for six months, statute sets the length of a provisional license at three months.
R6-6-1104.02	R6-6-1104.02 is ineffective because it mentions an address and a process that is obsolete.
R6-6-1104.03	R6-6-1104.03 is ineffective because it does not account for the vendor supported model of licensing employed for 98 percent of the developmental homes. In addition to information supplied by the applicant, a licensing agency completes a detailed home/social study and submits to the Division on the applicant's behalf.

R6-6-1111	R6-6-1111(D) and R6-6-1111(K) are ineffective because they refer to an inspection by ADHS, which is not reflective of current practice.
R6-6-1204	R6-6-1204 is ineffective because it allows a client to retain a minimum of twelve percent of the client's income or benefits for personal use whereas A.R.S. § 36-562(M) allows the client to retain a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A is not effective because it does not conform to the new federal poverty guidelines.
R6-6-1305	R6-6-1305 is ineffective because the requirement to disclose a SSN is prohibited by the Federal Privacy Act of 1974, 5 U.S.C. 552a.
R6-6-1501	R6-6-1501 is ineffective because an applicant may be an individual or an agency. In practice, certifying an individual requires a different process than certifying an agency.
R6-6-1503	R6-6-1503 will become obsolete and ineffective when AHCCCS launches the provider enrollment portal later this year.
R6-6-1504	R6-6-1504 is ineffective because it requires DCS and APS background checks, "only when the application indicates a past history of child or elder abuse." It is unclear how or if this rule applies when the "applicant" is an agency. Some of the requirements include self-declaration of criminal history, description of work experience, description of educational background, and three references.
R6-6-1504.02	R6-6-1504.02(F) is ineffective because the address is outdated.
R6-6-1505	R6-6-1505(A) is ineffective because it does not provide an adequate inspection cycle. Per the current rule, a setting only needs to be inspected one time. Current practice is that sites are inspected every two years. R6-6-1505(B) is ineffective because it is not reflective of current practice. Current practice is that HCBS settings are inspected for general safety and fire safety by DDD every two years.
R6-6-1506	R6-6-1506 is ineffective because it details a fingerprinting process that is in conflict with A.R.S. § 36-594.01. The rule does not reflect our current statute § 36-594.01 and lists current specific crimes that may preclude someone from passing a fingerprint background check. Furthermore, it does not mention the process by which a card can be suspended by the Department of Public Safety (DPS) based on a recent arrest by virtue of a file stop which suspends the clearance card and therefore stops the person from providing direct care. The time-frames mentioned in the rule are not applicable based on current statutes

	<p>and contract compliance requirements. The rule states an individual shall have a background check every three years. The current clearance cards are good for six years and are renewed on expiration. Clearance cards are portable and can be used at any DES program as long as they are valid. The current rule mentions a clearance letter, which is not portable. The Office of Special Investigation is no longer involved with the background check process. Current notifications of denied, suspended, and driving restricted statuses are sent to contracted agencies and Individual Independent Provider applicants. The contracted agency must respond within 10 business days that the employee is no longer providing direct care. If a contracted agency hires someone with a Level I fingerprint clearance card the agency must update the DPS database during the hiring and employment process using the form supplied by DPS.</p>
R6-6-1508	<p>R6-6-1508 is ineffective because it fails to account for the current practice of "certifying" group homes. Currently, DDD issues a certificate to each individual group home upon verification that the group home is licensed by ADHS and operated by an HCBS certified qualified vendor (agency).</p>
R6-6-1512	<p>R6-6-1512(1)(d) is ineffective because it only requires a "review" of Article 9. However, DDD has a well-established training and certification structure for Article 9.</p>
R6-6-1601	<p>R6-6-1601 is ineffective because it needs to include "exploitation" to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)</p>
R6-6-1602	<p>R6-6-1602 is ineffective because it needs to include "exploitation" to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, Safety, or APS.)</p>
R6-6-1603	<p>R6-6-1603 is ineffective because it needs to include "exploitation" to be consistent with A.R.S. § 46-454. Additionally, the rule needs to be amended to reflect the requirement of reporting to appropriate agencies (for example, law enforcement, DCS, or APS.)</p>
R6-6-2111	<p>R6-6-2111 is ineffective because it requires DDD to terminate a Qualified Vendor Agreement (QVA) for any of the following reasons: (3) when a vendor no longer meets the criteria defined in the Request for Qualified Vendor Application, (4) for</p>

	<p>non-compliance with the QVA requirements, and (6) as determined by DDD after the Qualified Vendor (QV) has been given notice and the opportunity to be heard. This rule appears to indicate that a QVA must be terminated immediately when a QV is non-compliant or no longer meets the criteria (not taking into account contract actions that can be taken prior to termination (for example, demand for assurances, enrollment suspense, etc.)). Also, subsection (6) seems to contradict subsections (3) and (4).</p>
R6-6-2115	<p>R6-6-2115 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.</p>
R6-6-2116	<p>R6-6-2116 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.</p> <p>Also, R6-6-2116(D) does not create a deadline by which a party must submit a written request for a final decision. This makes the process ineffective because a provider can potentially request a final decision five years after the problem-solving meeting.</p>
R6-6-2117	<p>R6-6-2117 is confusing as written and therefore ineffective. For example, during recent appeals involving DDD action in terminating QVAs, the providers' attorneys, DDD Contracts Unit and their attorneys, and DES Procurement and their attorney could not determine whether this rule or what other rule's procedure applied.</p>
R6-6-2201	<p>R6-6-2201 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.</p> <p>R6-6-2201(B) should be repealed because the appeal process for disputes with ALTCS members and ALTCS providers involving Medicaid-funded services is governed by AHCCCS. The process is fully outlined in AHCCCS' rules (Title 9, Chapter 34, Articles 2 and 4).</p>

R6-6-2205	R6-6-2205 is ineffective because it uses gender specific language. Additionally, language should be added that the person assisting a member designated by the member should do so free of charge (unless an attorney). Otherwise, that is an unauthorized practice of law.
R6-6-2206	R6-6-2206 is ineffective. A.R.S. § 41-1001 defines a rule as “an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” However, R6-6-2206 is ineffective because it does not provide specific citation of federal statute, regulation, state statute, or rules when benefits may be reduced or terminated prior to a hearing decision.
R6-6-2212	R6-6-2212 is ineffective because it does not indicate who has the burden of proof at the different types of administrative hearings held under this Article.
R6-6-2213	R6-6-2213 is ineffective because it contains inaccurate references to AHCCCS/ALTCS rules, “R9-28-802 and R9-28-804.” The correct citation for AHCCCS rules for grievances and appeals is Title 9, Chapter 34.
R6-6-2215	R6-6-2215 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.
R6-6-2216	R6-6-2216 refers to a different process for grievances involving DDD/ALTCS clients; however, the trigger for the different appeals process (R9-34-201 et seq. and R9-34-401 et seq.) is that the dispute is over a Medicaid-funded service. The Department needs to amend these rules to memorialize current practice.
R6-6-2308	R6-6-2308 is ineffective because it does not address day programs and employment services in monitoring requirements as specified in A.R.S. § 36-557.

4. Are the rules consistent with other rules and statutes?

Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R6-6-105	R6-6-105 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA, Pub. L. 104-19, also known as the Kennedy-Kassebaum Act, signed August 21, 1996 as amended and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example,

	R6-6-105 reads “consents for release of information obtained during intake shall expire within 90 days;” however, per HIPAA, authorizations can last until the expiration dates memorialized on the authorization as long as it is a definite end date (i.e., 30 days, one year, 10 years, end of 2015 school year, death of individual). Per HIPAA, if no expiration date is provided on the authorization, it is valid for one year from the effective (signed) date.
R6-6-106	R6-6-106 is inconsistent with federal law and needs to be amended to conform to relevant requirements of HIPAA as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164.
R6-6-802	R6-6-802 is inconsistent because the licensing authority for Division group homes is ADHS. The Department uses the rules in Article 8 for contract monitoring, pursuant to A.R.S. § 36-595.
R6-6-809	R6-6-809 is inconsistent with A.R.S. § 36-554(A)(7) regarding the requirement to notify parents or guardians of the complaint handling procedure in the community residential setting program.
R6-6-810	R6-6-810 is inconsistent with federal law and needs to be amended to conform to relevant requirements in HIPAA, as amended, and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164. For example, the rule does not identify language required to be included in the authorization by HIPAA (i.e., individual’s right to revoke the authorization; the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization; and the potential of information disclosed pursuant to the authorization to be subject to redisclosure by the recipient).
R6-6-903	R6-6-903 contains an outdated reference to Article 17, which expired effective August 30, 2005.
R6-6-1204	R6-6-1204, which allows a client to retain a minimum of 12 percent of the client’s income or benefits for personal use, is inconsistent with A.R.S. § 36-562(M), which allows a minimum of thirty percent.
Article 12, Appendix A	Article 12, Appendix A, Cost of Care Portion Table does not conform to the new federal poverty guidelines.
R6-6-1305	In R6-6-1305, the requirement to provide a SSN is inconsistent with the Federal Privacy Act of 1974, 5 § U.S.C. 552a.
R6-6-1601	R6-6-1601 needs to be updated to include “exploitation” to be consistent with A.R.S. § 46-454.

R6-6-1602	R6-6-1602 needs to be updated to include “exploitation” to be consistent with A.R.S. § 46-454.
R6-6-1603	R6-6-1603 needs to be updated to include “exploitation” to be consistent with A.R.S. § 46-454.
R6-6-2213	R6-6-2213 contains an inaccurate reference to the AHCCCS Office of Administrative Legal Services.
R6-6-2308	R6-6-2308 needs to be amended to conform to A.R.S. § 36-557 by adding day programs and employment services to the monitoring requirements.

5. Are the rules enforced as written?

Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

Rule	Explanation
NA	NA

6. Are the rules clear, concise, and understandable?

Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Article 1	The Department proposes some outdated definitions be removed or amended to reflect current health care law and practice. For example, the following definitions in R6-6-101 are outdated: “Behavior management,” “Case management,” “Community residential setting resident” or “resident,” “Cost of care,” “Cost of care portion,” “Direct care staff,” “Family support voucher,” “Individual service and program plan” or “ISPP,” “Individual service and program plan team” or “ISPP team,” “Least intrusive” or “least obtrusive,” “Lives independently,” “Main provider record,” “Medication error,” “Overcorrection,” “Physical restraint,” “Protective device,” “Residential service,” “Responsible party,” “Seclusion” or “locked time-out room,” “Service provider,” “Third-party liability,” “Third-party payor,” and “Time-out procedure.” Additionally, the term “Division” needs to be defined for clarity.
Article 6	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current

	requirements. R6-6-601 should be amended to reflect the current language of “Support Coordination” instead of “Case Management.” In addition, the Department proposes to update language and remove the provisions in R6-6-606 that are duplicative of A.R.S. § 36-560.
Article 8	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. The Department proposes to update the rules in this Article to reflect new terminology. The use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored.
Article 9	The Department proposes to update the rules in this Article to reflect the most current evidenced based practices. The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Articles 10 and 11	The Department proposes to consolidate the rules in Articles 10 and 11 into Article 10. The Department proposes to amend the rules within Articles 10 and 11 to enhance clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 12	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. Appendix A: Cost of Care Portion Table is outdated due to changes in federal poverty guidelines.
Article 13	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 15	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements. For example, the use of the term “licensee” is not the most appropriate term to describe the relationship between the Division and the party being monitored. The current rule does not mention the current practice that an employee or Individual Independent Provider may apply for a Good Cause Exception through the Arizona Board of Fingerprinting to be granted a Clearance Card under A.R.S. § 41-619(53).

Article 16	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 20	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 21	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.
Article 22	The Department proposes to amend the rules in this Article to improve clarity and conciseness by providing more comprehensive information relevant to current requirements.

7. Has the agency received written criticisms of the rules within the last five years?

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

8. Economic, small business, and consumer impact comparison:

General

DDD provides high-quality supports and services for eligible people who have autism, cerebral palsy, epilepsy, or intellectual disability. DDD provides, or contracts to provide, a variety of services, depending on available funding and eligibility, including: attendant care, day treatment and training, habilitation, home health assistance, home nursing, home modifications, housekeeping, services in intermediate care facilities, medical services, services in nursing facilities, respiratory therapy, respite, occupational therapy, physical therapy, speech therapy, and non-emergency transportation.

Funding

DDD is funded through state appropriations, federal Medicaid monies from the ALTCS program through AHCCCS, charges for services, and other revenue.

State Only Funds refers to funding for the state's program for persons with developmental disabilities who are not Medicaid-eligible. "Operating" refers to the money spent to operate or

administer each program at the agency level, while “direct” refers to funding that is used directly for client services. The current funding breakdown is as follows:

<u>Arizona Long Term Care System</u>	General Fund	Long Term Care System Fund	Total
Total ALTCS Appropriation	\$597,559,600	\$1,396,988,900	\$1,994,548,500
ALTCS Operating	\$39,767,100	\$98,252,600	\$138,019,700
ALTCS Direct Services	\$557,380,400	\$1,298,736,300	\$1,856,116,700
<u>State Only</u>			
Total State-Only Appropriation	\$36,513,400	\$26,559,600	\$63,073,000
State-Only Operating	\$2,400,000	\$0	\$2,400,000
State-Only Direct Services	\$34,113,400	\$26,559,600	\$60,673,000
Total FY 2020 FTE Allocation	2,299.00		

1. Members

As of June 1, 2019, DDD was serving 42,504 clients, with the program breakdown as follows:

Family Home	37,774
Group Home	3,041
Adult Developmental Foster Home	1,301
Child Developmental Foster Home	186
Institutional	96
Coolidge	75
State-Operated Group Home	25
Assisted-Living Centers/Facilities	6

Total	42,504
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2. Contractors

As of June 2019, DDD contracted with 566 HCBS Agencies and currently there are 1,209 Individual Providers. Currently there are 721 licensed Adult Developmental Foster Homes, and 306 licensed Child Developmental Foster Homes.

3. Employees

The total FY20 FTE allocation for DDD is 2,299.00.

4. Advocacy Organizations

Advocacy organizations that work on behalf of DDD members include The Arc of Arizona, Arizona Bridge to Independent Living, Arizona Center for Disability Law, Arizona Consortium for Children with Chronic Illness, Autism Society, Epilepsy Foundation of Arizona, Governor’s Council on Developmental Disabilities, Pilot Parents of Southern Arizona, People First of Arizona, and Raising Special Kids. The Division also has member advocates on staff and publishes direct contact information for those employees on its website.

Previous Economic Impact Statements

DDD has previously prepared economic impact statements for Articles 3 (Article 5 was repealed), 18, and 23. Economic Impact Statements were not completed on Articles 1, 4, 6, 8, 9, 10 (except R6-6-1004.01 through R6-6-1004.05), 11 (except R6-6-1104.01 through R6-6-1104.05), 12, 13, 16, 20, 21, and 22 because the rulemakings were exempt from the formal rulemaking process. Economic impact statements were not completed on R6-6-1004.01 through R6-6-1004.05 and R6-6-1104.01 through R6-6-1104.05 (adopted effective February 1, 1998); and Article 15 (adopted effective February 1, 1996) because the rulemakings were conducted prior to the requirement for an economic impact statement or were appropriately purged under public record requirements then in effect. The Department does not anticipate an economic impact for these rules as the rulemaking has been completed for some time.

Additional Economic Impact

Overall, the rules in Chapter 6 have a positive economic impact because they explain to the public the requirements and procedures for accessing DDD services, interacting with DDD as

a contractor, and serving as a licensed provider. The rules that are outdated or unclear create a negative economic impact, which the Department intends to rectify by amending these rules, as outlined in this report. To mitigate the negative economic impact, DDD provides supplemental information to its clients through its website, public meetings, workgroups, publications, and other forms of communication.

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22

Articles 1, 3, 4, 6, 8, 9, 12, 13, 16, 18, and 22 directly impact DDD's 33,925 clients, their families, and advocates.

- Article 1 contains definitions, and addresses the rights of individuals with developmental disabilities, confidentiality, and appropriate environment guidelines for placements and programs. These rules impact all current and prospective clients and contracted providers of DDD.
- Article 3 provides eligibility criteria and contains guidelines for making developmental disability determinations.
- Article 4 describes the process for applying for services.
- Article 6 explains how developmental disabilities services are provided.
- Article 8 describes programmatic standards and contract monitoring for community residential settings.
- Article 9 addresses the Department's requirements for managing inappropriate behaviors.
- Article 12 provides guidelines for the cost of care portion for services for minor client's parents, cost of care portion from a client's estate or trust, special provisions for clients receiving residential services, billing and the review and appeal process for cost of care portion.
- Article 13 describes how coordination of benefits and third-party payments are handled by the Department.
- Article 16 explains how the Department handles allegations of abuse and neglect.
- Article 18 provides a method for review of Department decisions.
- Article 22 describes the process for appeals and hearings.

Articles 10, 11, 15, 20, and 21

Articles 10, 11, 15, 20, and 21 directly impact DDD's 2,496 contractors, and indirectly impact clients, families, and advocates.

- Article 10 describes the process for obtaining a child developmental foster home license.
- Article 11 describes the process for obtaining an adult developmental home license.
- Article 15 describes the requirements for HCBS certification.
- Article 20 explains the Department's contracting process.
- Article 21 describes the procurement process and rate setting for Qualified Vendors.

Although most of the rules in this Chapter are out of date and require revision, the Department communicates regularly with all of its stakeholders and provides comprehensive information to supplement these rules on its website. Because the rules contain outdated terms, references, and procedures, they may be confusing to stakeholders when read in conjunction with current policy and procedure, but the Department communicates regularly with its stakeholders and provides ample documentation to ensure stakeholders are adequately informed of current activities.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous Five-Year Review Report approved by the Council on December 15, 2015, the Department recommended changes to all Articles in Chapter 6. On July 16, 2014, the Department received an exemption to draft Article 23. On May 16, 2016, the Department received an exemption to proceed with rulemakings on eight Articles (Articles 3, 5, 9, 10, 11, 15, 18, and 21). On November 6, 2017, the Department received an exemption to proceed with rulemakings on Article 4. On May 31, 2018, the Department received an exemption to proceed with rulemakings on Article 20. The Department amended Article 3 and repealed Article 5 effective August 24, 2018. The Department amended Article 18 effective January 27, 2018. Amendments to Article 4 were approved by the Governor's Regulatory Review Council on August 4, 2020. The Department has not yet made any decision regarding the amendment of

Article 20. The draft Notices of Proposed Rulemaking on remaining Articles 9, 10, 11, 15, and 21 are in various stages of development. However, revisions to Article 10, 11, 15, and 21 have been delayed until the end of 2020 in an effort to prioritize DDD efforts to complete the transition of the integrated physical and behavioral health contract and emergency preparedness regarding COVID-19. The Department did not take any action to revise Article 23 due to other competing priorities. The Department plans to request an exemption to proceed with Expedited rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by December 2020.

Progress on these Articles has been accomplished while balancing resource assignments and competing priorities primarily related to Medicaid funding. The Department is the AHCCCS program contractor responsible for the delivery of Medicaid services to individuals with developmental disabilities in Arizona. Between 2015 and 2020, implementing continuing changes in Medicaid requirements impacting the Department was a high priority in order not to jeopardize federal funding. Rulemaking was assigned to the same program unit that is responsible for updating program policy, which is an AHCCCS contract requirement. DDD has designated one position that is responsible to coordinate rule development along with other duties in the Policy Unit. DDD has recognized the lack of resources issues. Nevertheless, DDD is committed to timely implementation of the commitments made in this report.

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

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives. The amendment seeks to align the rule with statute and to make the rule more clear, concise, and understandable to the public. Program subject matter experts indicate that the amendment to the rule, as proposed in this report, is the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

The Department has determined that R6-6-401 and R6-6-1305 are more burdensome than, and in conflict with, corresponding federal statutes and regulations, including federal Privacy Act of 1974, 5 U.S.C. § 552a, because the federal law does not permit the use of members' SSNs by service providers when notifying DDD of third party liens or by applicants for DDD services.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that, because the licenses under Articles 8, 10, and 11 are issued under A.R.S. §§ 36-592, 36-594.01, 36-595, and 36-595.03, the exception in A.R.S. § 41-1037(A)(5) applies.

14. **Proposed course of action**

If possible, identify a month and year by which the agency plans to complete the course of action.

The Department plans to request an exemption to proceed with Expedited Rulemaking to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by December 2020. The Department plans to submit the Notice of Final Expedited Rulemaking to the Governor's Regulatory Council to resolve inconsistency in the rules identified in item 4 (Consistency with other rules and statutes) of this Report by August 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 9, 10, 11, 15, and 21 by December 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council to amend Articles 1 and 13 by December 2022.

The Department plans to file a Notice of Final Rulemaking for Articles 6, 8, 12, 16, 22, and 23 by December 2022.

Apart from the rules reviewed in this Report, the Department received a Moratorium exception from the Governor's Office on September 17, 2019 to promulgate new rules to implement

A.R.S. § 36-568 (Group homes; intermediate care facilities; electronic monitoring; definition).
The Department is drafting the Notice of Proposed Rulemaking for the new rules.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 20, Chapter 6, Article 3, Financial Provisions and Procedures



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: January 5, 2021

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

FROM: Council Staff

DATE: December 8, 2020

**SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
(O21-0101)
Title 20, Chapter 6, Article 3, Financial Provisions and Procedures**

Summary

This One Year Review Report (1YRR) from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 6, Article 3, regarding Financial Provisions and Procedures. These rules were adopted through an exempt rulemaking pursuant to Laws 2019, Ch. 180, § 2, which gave the Department a one year exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6. The purpose of this exempt rulemaking was to adopt the National Association of Insurance Commissioners (NAIC) model regulation on corporate governance (MDL 306).

The Department submitted this 1YRR pursuant to A.R.S. § 41-1095.

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

Yes. The Department cites both general and specific statutory authority for the rules under review. The Department also cites to Laws 2019, Ch. 180, § 2, which gave it a one year exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 to make these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The stakeholders are the Department and its regulated population, which includes insurers and insurer groups.

These rules have no impact on small businesses or on consumers because they are a reporting requirement for insurers and insurer groups. The statutes that impose the reporting requirement create economic impact to these entities. The rules merely augment the statutory sections and do not impose any additional costs to the entities beyond statutory requirements.

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?**

These rules are procedural in nature and do not impose any additional costs to regulated persons not already imposed under the Arizona Corporate Governance Act.

4. **Has the agency received any written criticisms of the rules since the rule was adopted?**

No. The Department did not receive any written criticisms of the rules since they were adopted.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department states that the rules under review are clear, concise, and understandable.

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

Yes. The Department states that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced consistent with the Department's enforcement policy.

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 states that there is no corresponding federal law to the rules under review.

10. **Has the agency completed any additional process required by law?**

Not applicable. No additional process is required under Laws 2019, Ch. 180, § 2.

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

No. The rules under review do not require a permit, license or agency authorization.

12. **Conclusion**

Council staff finds that the Department submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.



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

Douglas A. Ducey, Governor
Evan Daniels, Director

November 18, 2020

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

RE: Arizona Department of Insurance¹
Title 20, Chapter 6, Article 3, R20-6-310 through R20-6-310.04
One Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the One Year Review Report of the Arizona Department of Insurance and Financial Institutions, Division of Insurance ("Department") for Title 20, Chapter 6, Article 3, R20-6-310 through R20-6-310.04 which is due on December 4, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

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

Sincerely,

A handwritten signature in blue ink that reads "Evan Daniels". The signature is fluid and cursive.

Evan Daniels
Director

¹On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance.

Arizona Department of Insurance and Financial Institutions

Insurance Division¹

1 YEAR REVIEW REPORT PURSUANT TO A.R.S. § 41-1095

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance

Article 3. Financial Provisions and Procedures

December 4, 2020

1. **Rules' Effectiveness in Achieving their Objectives.**

Including a summary of any available data supporting the conclusions reached.

Rule	Objective
R20-6-310 Corporate Governance	R20-6-310 dovetails with the Corporate Governance Act (Title 20, Ch. 2, Article 16, A.R.S. §§ 20-492 through 20-492.06). These rules adopt the National Association of Insurance Commissioners' (NAIC) model regulation on Corporate Governance (MDL 306). This rule generally describes the purpose of the Corporate Governance rules and is effective in achieving its objective.
R20-6-310.01 Definitions	R20-6-310.01 defines terms that are used in A.A.C. §§ R20-6-310.01 through R20-6-310.04 and is effective in achieving its objective.
R20-6-310.02 Filing Procedures	R20-6-310.02 describes the procedures required for an insurer, or an insurance group of which the insurer is a member, for filing the report required by Title 20, Chapter 2, Article 16. The annual report required is called a CGAD (Corporate Governance Annual Disclosure) and generally describes the corporate governance framework and structure. This rule is effective in achieving its objective.
R20-6-310.03 Contents of CGAD	R20-6-310.03 describes how the insurer or insurance group can demonstrate the strengths of their governance and practices. The report requires information about the insurer or insurance group's board, senior governing entity, senior management and processes for ensuring the appropriate amount of oversight. This rule is effective in achieving its objective.
R20-6-310.04 Severability Clause	R20-6-310.04 is a saving clause in the event any provisions or applications of the Corporate Governance rules are held invalid. This rule is effective in achieving its objective.

2. **Has the agency received written criticisms of the rules since the rules were adopted?**

Including any written analysis submitted to the agency questioning whether the rules are based on valid scientific or reliable principles or methods.

Yes ___ No X

3. **Authorization of the rule by existing statutes**

¹ On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions. The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance.

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-492.02

Session law authorizing the exemption: Laws 2019, 1st Reg. Sess.,
Ch. 180, § 2

4. **Are the rules consistent with other rules and statutes and current agency enforcement policy?**

Yes X No ___

5. **Are the rules clear, concise, and understandable?**

Yes X No ___

6. **Economic, small business, and consumer impact of the rules:**

In 2019, the Legislature adopted the National Association of Insurance Commissioners (NAIC) Corporate Governance Annual Disclosure Model Act at Arizona Revised Statutes (“A.R.S.”) by enacting the Corporate Governance Act at Title 20, Chapter 2, Article 16 (Laws 2019, 1st Reg. Sess., Ch. 180, § 1). *See*, A.R.S. §§ 20-492 through 20-492.06. These rules adopt the NAIC’s correlate model regulation on Corporate Governance (MDL 306).

These rules have no impact on small businesses or on consumers because they are a reporting requirement for insurers and insurer groups. The economic impact to these entities are imposed by the statutes that impose the reporting requirement. *See*, A.R.S. § 20-492.01(A). The rules merely augment the statutory sections and do not impose any additional costs to the entities not already imposed by the statutes.

7. **Has the agency received any business competitiveness analyses of the rules regarding the rules’ impact on this state’s business competitiveness as compared to the competitiveness of business in other states?**

Yes ___ No X

8. **Whether the agency has completed any additional process required by law, including the requirement for the agency to publish otherwise exempt rules or provide the public with an opportunity to comment on the rules.**

In the session law (Laws 2019, Ch. 180, § 2), the Legislature exempted the Department from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one year after the effective date of the act. The Legislature did not impose any other requirement upon the Department.

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

The rules in these rule Sections are procedural in nature and do not impose any additional costs to regulated persons not already imposed by the Arizona Corporate Governance Act (A.R.S. §§ 20-492 through 20-492.06).

10. **Are the rules more stringent than corresponding federal laws unless a statutory authority exists to exceed the requirements of the federal law?**

No corresponding Federal law exists. The Arizona Corporate Governance Act is strictly state law and has no Federal counterpart. The rules adopted the NAIC Model Regulation on Corporate Governance (MDL 306).

11. **For rules that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037:**

The rules do not require the issuance of a permit, license or agency authorization. They merely set up a process for an insurer or member of an insurance group to report to the Department its corporate governance framework and structure.

CHAPTER 6. DEPARTMENT OF INSURANCE

6-214 renumbered from R20-6-217 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-215. Renumbered**Historical Note**

Adopted effective September 7, 1981 (Supp. 81-3). Amended subsections (D) thru (H), deleted Agent's Statement and Exhibit D effective March 30, 1983 (Supp. 83-2). R20-6-215 recodified from R4-14-215 (Supp. 95-1). Amended by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215 renumbered to R20-6-212 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-215.01. Renumbered**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215.01 renumbered to R20-6-212.01 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-216. Renumbered**Historical Note**

Adopted effective as set forth in subsection (H) (Supp. 80-6). R20-6-216 recodified from R4-14-216 (Supp. 95-1). Former R20-6-216 renumbered to R20-6-213 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-217. Renumbered**Historical Note**

Adopted effective September 14, 1982 (Supp. 82-3). Amended subsections (C) and (D), deleted (F) effective January 1, 1987, filed December 16, 1986 (Supp. 86-6). R20-6-217 recodified from R4-14-217 (Supp. 95-1). Former R20-6-217 renumbered to R20-6-214 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

Editor's Note: The following Section expired under A.R.S. § 41-1056(E) on September 30, 2001 at 8 A.A.R. 491. The Notice of Rule Expiration was not received until January 9, 2002. Therefore, the repeal of the rule noted in the Historical Note is moot (Supp. 02-1).

R20-6-218. Repealed**Historical Note**

Adopted effective November 9, 1984 (Supp. 84-6). R20-6-218 recodified from R4-14-218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5443, effective November 16, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1) (see Editor's Note above).

ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES**R20-6-301. Expired****Historical Note**

Former General Rule Number 3. R20-6-301 recodified from R4-14-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

R20-6-302. Expired**Historical Note**

Former General Rule 62-11. R20-6-302 recodified from R4-14-302 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

R20-6-303. Termination of Certificate of Authority and Release of Deposit

- A. Domestic Insurers.** To request termination of a certificate of authority and, if applicable, release of statutory deposit, a domestic insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
 2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
 3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
 4. A plan of extinguishment for its outstanding liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no outstanding liabilities to policyholders or claimants under subsection (C);
 5. A certified copy of the insurer's Board of Directors resolution or other documentation of the insurer's official action taken according to the insurer's statutorily required organizational documents approving the insurer's:
 - a. Withdrawal from the insurance business,
 - b. Dissolution of the insurer,
 - c. Merger with an insurer authorized in Arizona to transact the insurer's previously written and active lines of business of the insurer requesting termination, or
 - d. Transfer of domicile to another state or country.
 6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication, or other documentation that the insurer intends to file with the Arizona Corporation Commission after issuance of the Director's order as provided in subsection (D)(2);
 7. If requested by the director, a written agreement that guarantees payment of substantially all liabilities of the domestic insurer, other than obligations extinguished under subsection (C).
- B. Foreign and Alien Insurers.** To request termination of its certificate of authority and, if applicable, release of its deposit, a foreign or alien insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
 2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
 3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
 4. A plan of extinguishment for its Arizona liabilities that satisfies the requirements of subsection (C) or a sworn

CHAPTER 6. DEPARTMENT OF INSURANCE

- affidavit stating that the insurer has no Arizona liabilities under subsection (C);
5. A copy of an order issued by the insurance director or other appropriate regulatory authority in the insurer's state or country of domicile that approves or authorizes either the insurer's:
 - a. Withdrawal from the insurance business,
 - b. Dissolution of the insurer,
 - c. Merger (approval of the merger from the states of domicile of the insurers), or
 - d. Transfer of domicile, if applicable.
 6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication or other required documentation that the insurer filed in its state of domicile; and
 7. If requested by the director, a written agreement that guarantees payment of substantially all Arizona liabilities of the insurer, other than obligations extinguished under subsection (C).
- C. Insurer's Plan for Extinguishment of Liabilities.**
1. To extinguish substantially all liabilities under subsection (A)(4) or subsection (B)(4) as applicable, an insurer may:
 - a. Reinsure the insurer's business in force with another insurer by entering into an agreement of bulk reinsurance that shall be effective when filed with and approved in writing by the director.
 - i. The agreement shall provide for assumption of all policyholder claims by the reinsurer including claims incurred but unreported as of the effective date of the agreement.
 - ii. The agreement may include recapture provisions exercisable by the insurer in the event the termination of its certificate of authority is not completed.
 - iii. Unless the director otherwise approves, the agreement shall provide that the reinsurer be licensed in Arizona for the particular lines of business reinsured.
 - b. Merge with another insurer that:
 - i. Assumes the liabilities of the non-surviving insurer; and
 - ii. Is authorized in Arizona for the previously written and active lines of business assumed, unless otherwise approved by the director.
 - c. Use its deposit, any additional security deposit or both to secure payment of former policyholder, policyholder, or claimant liabilities that are not reinsured or otherwise secured.
 2. For purposes of this Section, "substantially all liabilities" under Title 20 means all policyholder and claimant obligations reported by the insurer in the statement of financial condition, whether or not liquidated in amount, and shall include former policyholder claims and rights to refunds.
- D. Consideration of the Request for Termination of Certificate of Authority and Release of Deposit under subsections (A) and (B).**
1. If the director determines that the insurer has extinguished substantially all liabilities as required under this Section and has otherwise demonstrated compliance with this Section and A.R.S. Title 20, the director shall grant the request to terminate the certificate of authority and, if appropriate, release the insurer's deposit, provided:
 - a. The insurer has no fees, taxes, assessments or filings outstanding to the Department; and
 - b. The insurer is not subject of any pending investigation or examination under Title 20 by the Department.
 2. The director's order shall condition the release of a domestic insurer's deposit upon receipt by the director of evidence of the official filing with the Arizona Corporation Commission of the documentation described in subsection (A)(6).
 3. If the director determines that the insurer is unable to extinguish substantially all liabilities as required under this Section, or otherwise has not complied with this Section or with A.R.S. Title 20, the director shall notify the insured in writing that the request has been denied and the reasons for the denial.
- E. Exclusions. This Section does not apply to:**
1. An insurer's exchange and substitution of cash or eligible securities under A.R.S. § 20-586;
 2. An insurer's withdrawal of excess deposits, either cash or eligible securities, under A.R.S. §§ 20-587 and 20-588(A)(2); or
 3. Releases of deposits made under A.R.S. § 20-588(A)(3).
- Historical Note**
- Former General Rule 72-29. R20-6-303 recodified from R4-14-303 (Supp. 95-1). Section R20-6-303 repealed; new Section R20-6-303 made by final rulemaking at 14 A.A.R. 3432, effective October 4, 2008 (Supp 08-3).
- R20-6-304. Reserved**
- R20-6-305. Expired**
- Historical Note**
- Adopted effective September 13, 1978, except that it shall apply to the accounting treatment for unearned premium reserves and reinsurance premium receivables for credit life disability insurance on January 1, 1979, and all annual statements filed for periods on or after that date (Supp. 78-5). R20-6-305 recodified from R4-14-305 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).
- R20-6-306. Reserved**
- R20-6-307. Life and Disability Reinsurance Agreements**
- A. Scope.** This rule applies to all domestic life and disability insurers and reinsurers, and to all other licensed life and disability insurers and accredited reinsurers that are not subject to a substantially similar rule in their jurisdictions of domicile. This rule applies to the disability business of licensed property and casualty insurers. This rule does not apply to assumption reinsurance, yearly renewable term reinsurance, or nonproportional stop loss or catastrophe reinsurance, or similar forms of nonproportional reinsurance.
- B. Definitions**
1. "Agreement" means a reinsurance agreement and any amendment to a reinsurance agreement.
 2. "Credit Quality" means the risk that invested assets supporting the reinsured business will decrease in value but excludes decreases to changes in interest rate.
 3. "Department" means the Arizona Department of Insurance.
 4. "Director" means the Director of the Arizona Department of Insurance.
 5. "Disintermediation" means the risk that interest rates will rise and policy loans and surrenders will increase or maturing contracts will not renew at anticipated rates of renewal.

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6. "Lapse" means the risk that a policy will voluntarily terminate before the recoupment of a statutory surplus strain experienced at issuance of the policy.
7. "Reinvestment" means the risk that interest rates will fall and funds reinvested will therefore earn less than expected.

C. Accounting Requirements

1. Unless authorized by the director, an insurer shall not, for reinsurance ceded, reduce any liability, or establish any asset in any statutory financial statement filed with the Department if, by the terms of the agreement, or in effect, any of the following conditions exist:
 - a. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover the ceding insurer's allocable renewal expenses anticipated at the time the business is reinsured on the portion of the business reinsured, unless a liability is established for the present value of the shortfall using assumptions equal to the applicable statutory reserve basis on the business reinsured.
 - b. The ceding insurer is required to reimburse the reinsurer for negative experience under the agreement. Neither the offset of the ceding insurer's experience refunds against current and prior years' losses, nor payment by the ceding insurer of an amount equal to the reinsurer's current and prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer, shall be considered a reimbursement to the reinsurer for negative experience.
 - c. The ceding insurer may be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of a specified event, including the insolvency of the ceding insurer. Termination of the agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due shall not be considered a deprivation of surplus or assets within the meaning of this subsection.
 - d. The ceding insurer is required, at scheduled times, to terminate the agreement or recapture automatically all or part of the reinsurance ceded.
 - e. The ceding insurer may be required to pay the reinsurer amounts other than from income reasonably expected from the reinsured policies.
 - f. Significant risks inherent in the business reinsured are not transferred to the reinsurer. Table A identifies the risks deemed significant for representative types of business.
 - g. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not transfer the underlying assets to the reinsurer, segregate the underlying assets in a trust or escrow account, or otherwise segregate the underlying assets. The assets that support the reserves for classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk, or for long-term care or long-term disability insurance, traditional non-par permanent, traditional par permanent, adjustable premium permanent, indeterminate premium permanent, or universal life fixed premium with no dump-in

premiums allowed, may be held by the ceding company without segregation. To determine the reserves for classes of business, the supporting assets of which may be held without being segregated, the reserve interest rate adjustment formula shall reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reported in the ceding insurer's statutory financial statement.

- h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.
 - i. The ceding insurer is required to make representations or warranties unrelated to the business reinsured.
 - j. The ceding insurer is required to make representations or warranties related to future performance of the business reinsured.
2. An agreement entered into after the effective date of this rule to reinsure business issued before the effective date of the agreement shall be filed by the ceding insurer with the Director within 30 days after execution of the agreement. Each filing shall be accompanied by a description of the corresponding reduction in liabilities or other credit for reinsurance, and any other financial impact of the agreement, reported in the ceding insurer's statutory financial statements. When an increase in surplus net of federal income tax results from an agreement falling under this subsection, the ceding insurer shall separately identify the increase as a surplus item in the aggregate write-ins for gains and losses in surplus in the Capital and Surplus account of the ceding insurer's statutory financial statement. As earnings emerge from the business reinsured, the ceding insurer shall report in its statutory financial statement recognition of surplus increase as income on a net of tax basis as reinsurance ceded.

D. Written Agreements

1. A ceding insurer shall not reduce any liability or establish any asset in any statutory financial statement filed with the Department, unless the ceding insurer and the reinsurer have executed an agreement or a binding letter of intent by the "as of" date of the statutory financial statement.
2. A ceding insurer shall not be allowed a credit for the reinsurance ceded based on a letter of intent unless the ceding insurer and the reinsurer execute an agreement within 90 days from the execution date of the letter of intent.
3. The agreement shall provide that:
 - a. The agreement constitutes the entire contract between the parties with respect to the business reinsured, and there are no understandings between the parties other than as expressed in the agreement; and
 - b. Any change or modification to the agreement shall be void unless made by written amendment signed by all parties.

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-307 recodified from R4-14-307 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4).

Table A. Risk Categories

Risk Categories:

- (a). Morbidity (d). Credit Quality

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(b). Mortality	(e). Reinvestment					
(c). Lapse	(f). Disintermediation					
		a	b	c	d	e
						f
Disability Insurance, other than long-term care or long-term disability insurance		+	0	+	0	0
Long-term care or long-term disability insurance		+	0	+	+	0
Immediate Annuities		0	+	0	+	0
Single Premium Deferred Annuities		0	0	+	+	+
Flexible Premium Deferred Annuities		0	0	+	+	+
Guaranteed Interest Contracts		0	0	0	+	+
Other Annuity Deposit Business		0	0	+	+	+
Single Premium Whole Life		0	+	+	+	+
Traditional Non-par Permanent Life		0	+	+	+	+
Traditional Non-par Term Life		0	+	+	0	0
Traditional Par Permanent Life		0	+	+	+	+
Traditional Par Term Life		0	+	+	0	0
Adjustable Premium Permanent Life		0	+	+	+	+
Indeterminate Premium Permanent Life		0	+	+	+	+
Universal Life Flexible Premium		0	+	+	+	+
Universal Life Fixed Premium, with dump-in premiums allowed		0	+	+	+	+
	+ - Significant					0 - Insignificant

Historical Note

Adopted effective December 7, 1995 (Supp. 95-4). Corrected misspelled word “adjustable” as submitted in final rule (Supp. 98-3).

R20-6-308. Expired

Historical Note

Adopted effective March 22, 1993 (Supp. 93-1). R20-6-308 recodified from R4-14-308 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

R20-6-309. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

R20-6-310. Corporate Governance

The purpose of Sections R20-6-310.01 through R20-6-310.03 is to set forth procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD) deemed necessary by the Director to carry out the provisions of Title 20, Chapter 2, Article 16 on Corporate Governance.

Historical Note

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

R20-6-309.01. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

R20-6-310.01. Definitions

The definitions in A.R.S. § 20-492 and this Section apply to Sections R20-6-310.02 through R20-6-310.04.

“CGAD” means Corporate Governance Annual Disclosure.

“NAIC” means National Association of Insurance Commissioners.

“Senior Management” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), Chief Operations Officer (“COO”), Chief Procurement Officer (“CPO”), Chief Legal Officer (“CLO”), Chief Information Officer (“CIO”), Chief Technology Officer (“CTO”), Chief Revenue Officer (“CRO”), Chief Visionary Officer (“CVO”), or any other “C” level executive.

R20-6-309.02. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

R20-6-309.03. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

R20-6-309.04. Expired

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Historical Note

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

R20-6-310.02. Filing Procedures

- A.** Deadline to file. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by A.A.C. Title 20, Chapter 2, Article 16 shall, no later than June 1 of each calendar year, submit to the Director a CGAD that contains the information described in Section R20-6-310.03.
- B.** Attestation. The CGAD must include a signature of the insurer's or insurance group's CEO or corporate secretary attesting to the best of that person's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that the copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors or appropriate committee of the Board of Directors.
- C.** Format of the CGAD. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Director to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.
- D.** Insurer or insurance group to determine level of reporting.
 1. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance.
 2. The insurer or insurance group is encouraged to make the CGAD disclosures at:
 - a. The level at which the insurer's or insurance group's risk appetite is determined,
 - b. The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or
 - c. The level at which legal liability for failure of general corporate governance duties would be placed.
 3. If the insurer or insurance group determines the level of reporting based on the criteria in subsection (D)(2), it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.
- E.** CGAD completed at the insurance group level. Notwithstanding subsection (A) and as outlined in A.R.S. § 20-492.01, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the NAIC's Financial Analysis Handbook 2018 Annual/2019 Quarterly, pp. 771 through 774, and no future editions. In these instances, a copy of the CGAD must also be provided, upon request, to the chief regulatory official of any state in which the insurance group has a domestic insurer.
- F.** Reference to other existing documents. An insurer or insurance group may comply with this Section by referencing other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in R20-6-310.03. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach

the referenced document if it is not already filed or available to the Director.

- G.** Subsequent filings of the CGAD. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made to the previously filed CGAD. The filing shall also state if no changes are made to the information or activities previously reported by the insurer or insurance group.

Historical Note

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

R20-6-310.03. Contents of CGAD

- A.** Inclusion of attachments. The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.
- B.** Board. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
 1. The Board and its various committees ultimately responsible for overseeing the insurer or insurance group and the level or levels at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
 2. The duties of the Board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of the Chief Executive Officer (CEO) and Chairman of the Board within the organization.
- C.** Senior Governing Entity. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and its significant committees, including a discussion of the following factors:
 1. How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.
 2. How an appropriate amount of independence is maintained on the Board and its significant committees.
 3. The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.
 4. How the insurer or insurance group identifies, nominates and elects members of the Board and its committees. The discussion should include, for example:
 - a. Whether a nomination committee is in place to identify and select individuals for consideration.
 - b. Whether term limits are placed on directors.
 - c. How the election and re-election processes function.
 - d. Whether a Board diversity policy is in place and if so, how it functions.
 5. The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).
- D.** Senior Management. The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

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1. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
 - a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.
 - b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
 2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
 - a. Compliance with laws, rules, and regulations; and
 - b. Proactive reporting of any illegal or unethical behavior.
 3. The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk-taking. Elements to be discussed may include, for example:
 - a. The Board's role in overseeing management compensation programs and practices.
 - b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
 - c. How compensation programs are related to both company and individual performance over time;
 - d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
 - e. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;
 - f. Any other factors relevant to understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
 4. The insurer's or insurance group's plans for CEO and Senior Management succession.
- E. Oversight.** The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
1. How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
 2. How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps the Senior Management is taking to monitor and manage those risks;
 3. How reporting responsibilities are organized for each critical risk area. The description should allow the Director to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, for example, the following critical risk areas of the insurer:
 - a. Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report submitted pursuant to A.R.S. § 20-491.03);
 - b. Actuarial function;
 - c. Investment decision-making processes;
 - d. Reinsurance decision-making processes;
 - e. Business strategy/finance decision-making processes;
 - f. Compliance function;
 - g. Financial reporting/internal auditing; and
 - h. Market conduct decision-making processes.
- Historical Note**
New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).
- R20-6-310.04. Severability Clause**
If any provision of this Section, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to that end the provisions of this Section are severable.
- Historical Note**
New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).
- Appendix A. Expired**
- Table 1. Expired**
- Table 2. Expired**
- Table 3. Expired**
- Table 4. Expired**
- Table 5. Expired**
- Table 6. Expired**
- Historical Note**
Appendix A adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Appendix A (including Tables 1 through 6) expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).
- ARTICLE 4. TYPES OF INSURANCE COMPANIES**
- R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers**
- A.** The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:
- Section 1 A is modified to read: "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 180
SENATE BILL 1007

AN ACT

AMENDING TITLE 20, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16; RELATING TO THE TRANSACTION OF INSURANCE BUSINESS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 20, chapter 2, Arizona Revised Statutes, is
3 amended by adding article 16, to read:

4 ARTICLE 16. CORPORATE GOVERNANCE

5 20-492. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "CORPORATE GOVERNANCE ANNUAL DISCLOSURE" OR "CGAD" MEANS A
8 CONFIDENTIAL REPORT THAT IS FILED BY THE INSURER OR INSURANCE GROUP AND
9 THAT IS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.

10 2. "INSURANCE GROUP" MEANS THOSE INSURERS AND AFFILIATES INCLUDED
11 WITHIN AN INSURANCE HOLDING COMPANY SYSTEM AS DEFINED IN SECTION 20-481.

12 3. "INSURER":

13 (a) MEANS A DOMESTIC INSURER AS DEFINED IN SECTION 20-203.

14 (b) DOES NOT INCLUDE:

15 (i) AN AGENCY, AUTHORITY OR INSTRUMENTALITY OF THE UNITED STATES
16 AND ITS POSSESSIONS AND TERRITORIES, THE COMMONWEALTH OF PUERTO RICO OR
17 THE DISTRICT OF COLUMBIA.

18 (ii) A STATE.

19 (iii) A POLITICAL SUBDIVISION OF A STATE.

20 20-492.01. Disclosure requirements

21 A. BY JUNE 1 OF EACH CALENDAR YEAR, AN INSURER, OR THE INSURANCE
22 GROUP OF WHICH THE INSURER IS A MEMBER, SHALL SUBMIT TO THE DIRECTOR A
23 CORPORATE GOVERNANCE ANNUAL DISCLOSURE THAT CONTAINS THE INFORMATION
24 DESCRIBED IN SECTION 20-492.03. NOTWITHSTANDING ANY REQUEST FROM THE
25 DIRECTOR MADE PURSUANT TO SUBSECTION C OF THIS SECTION, IF THE INSURER IS
26 A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT
27 REQUIRED BY THIS SECTION TO THE CHIEF REGULATORY OFFICIAL OF THE LEAD
28 STATE FOR THE INSURANCE GROUP, IN ACCORDANCE WITH THE LAWS OF THE LEAD
29 STATE, AS DETERMINED BY THE PROCEDURES OUTLINED IN THE MOST RECENT
30 FINANCIAL ANALYSIS HANDBOOK THAT IS ADOPTED BY THE NATIONAL ASSOCIATION OF
31 INSURANCE COMMISSIONERS.

32 B. THE CGAD MUST INCLUDE A SIGNATURE OF THE INSURER OR INSURANCE
33 GROUP'S CHIEF EXECUTIVE OFFICER OR CORPORATE SECRETARY ATTESTING TO THE
34 BEST OF THAT INDIVIDUAL'S BELIEF AND KNOWLEDGE THAT THE INSURER HAS
35 IMPLEMENTED THE CORPORATE GOVERNANCE PRACTICES AND THAT A COPY OF THE
36 DISCLOSURE HAS BEEN PROVIDED TO THE INSURER'S BOARD OF DIRECTORS OR THE
37 APPROPRIATE COMMITTEE OF THE BOARD.

38 C. AN INSURER THAT IS NOT REQUIRED TO SUBMIT A CGAD UNDER THIS
39 SECTION SHALL DO SO ON THE DIRECTOR'S REQUEST.

40 D. FOR THE PURPOSES OF COMPLETING THE CGAD, THE INSURER OR
41 INSURANCE GROUP MAY PROVIDE INFORMATION REGARDING CORPORATE GOVERNANCE AT
42 THE ULTIMATE CONTROLLING PARENT LEVEL, AN INTERMEDIATE HOLDING COMPANY
43 LEVEL OR THE INDIVIDUAL LEGAL ENTITY LEVEL, DEPENDING ON HOW THE INSURER
44 OR INSURANCE GROUP HAS STRUCTURED ITS SYSTEM OF CORPORATE GOVERNANCE. THE
45 INSURER OR INSURANCE GROUP IS ENCOURAGED TO MAKE THE CGAD AT THE LEVEL AT

1 WHICH THE INSURER'S OR INSURANCE GROUP'S RISK APPETITE IS DETERMINED, THE
2 LEVEL AT WHICH THE EARNINGS, CAPITAL, LIQUIDITY, OPERATIONS AND REPUTATION
3 OF THE INSURER ARE OVERSEEN COLLECTIVELY AND AT WHICH THE SUPERVISION OF
4 THOSE FACTORS ARE COORDINATED AND EXERCISED OR THE LEVEL AT WHICH LEGAL
5 LIABILITY FOR FAILURE OF GENERAL CORPORATE GOVERNANCE DUTIES WOULD BE
6 PLACED. IF THE INSURER OR INSURANCE GROUP DETERMINES THE LEVEL OF
7 REPORTING BASED ON THESE CRITERIA, IT SHALL INDICATE WHICH OF THE THREE
8 CRITERION WAS USED TO DETERMINE THE LEVEL OF REPORTING AND EXPLAIN ANY
9 SUBSEQUENT CHANGES IN LEVEL OF REPORTING.

10 E. THE REVIEW OF THE CGAD AND ANY ADDITIONAL REQUESTS FOR
11 INFORMATION SHALL BE MADE THROUGH THE LEAD STATE AS DETERMINED BY THE
12 PROCEDURES WITHIN THE MOST RECENT FINANCIAL ANALYSIS HANDBOOK THAT IS
13 ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

14 F. INSURERS THAT PROVIDE INFORMATION THAT IS SUBSTANTIALLY SIMILAR
15 TO THE INFORMATION REQUIRED BY THIS ARTICLE IN OTHER DOCUMENTS THAT ARE
16 PROVIDED TO THE DIRECTOR, INCLUDING PROXY STATEMENTS THAT ARE FILED IN
17 CONJUNCTION WITH FORM B REQUIREMENTS, OR OTHER STATE OR FEDERAL FILINGS
18 THAT ARE PROVIDED TO THE DEPARTMENT ARE NOT REQUIRED TO DUPLICATE THAT
19 INFORMATION IN THE CGAD BUT ARE REQUIRED TO CROSS-REFERENCE THE DOCUMENT
20 IN WHICH THE INFORMATION IS INCLUDED.

21 20-492.02. Rules and orders

22 ON NOTICE AND AN OPPORTUNITY FOR ALL INTERESTED PERSONS TO BE HEARD,
23 THE DIRECTOR MAY ADOPT RULES AND ISSUE ORDERS NECESSARY TO CARRY OUT THIS
24 ARTICLE.

25 20-492.03. Contents of corporate governance annual disclosure

26 A. THE INSURER OR INSURANCE GROUP HAS DISCRETION OVER THE RESPONSES
27 TO THE CGAD INQUIRIES, IF THE CGAD CONTAINS THE MATERIAL INFORMATION
28 NECESSARY TO ALLOW THE DIRECTOR TO GAIN AN UNDERSTANDING OF THE INSURER'S
29 OR INSURANCE GROUP'S CORPORATE GOVERNANCE STRUCTURE, POLICIES AND
30 PRACTICES. THE DIRECTOR MAY REQUEST ADDITIONAL INFORMATION THAT THE
31 DIRECTOR DEEMS MATERIAL AND NECESSARY TO PROVIDE THE DIRECTOR WITH A CLEAR
32 UNDERSTANDING OF THE CORPORATE GOVERNANCE POLICIES, THE REPORTING OR
33 INFORMATION SYSTEM OR THE CONTROLS IMPLEMENTING THOSE POLICIES.

34 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE INSURER OR
35 INSURANCE GROUP SHALL PREPARE THE CGAD CONSISTENT WITH RULES ADOPTED BY
36 THE DEPARTMENT. DOCUMENTATION AND SUPPORTING INFORMATION SHALL BE
37 MAINTAINED AND MADE AVAILABLE ON EXAMINATION OR ON THE REQUEST OF THE
38 DIRECTOR.

39 20-492.04. Confidentiality

40 A. DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING THE CGAD,
41 THAT ARE IN THE POSSESSION OR CONTROL OF THE DEPARTMENT AND THAT ARE
42 OBTAINED BY, CREATED BY OR DISCLOSED TO THE DIRECTOR OR ANY OTHER PERSON
43 UNDER THIS ARTICLE ARE RECOGNIZED BY THIS STATE AS BEING PROPRIETARY AND
44 CONTAINING TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS OR OTHER
45 INFORMATION ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT TO

1 TITLE 39, CHAPTER 1, ARTICLE 2, ARE NOT SUBJECT TO SUBPOENA AND ARE NOT
2 SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL
3 ACTION. THE DIRECTOR IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR
4 OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION
5 BROUGHT AS A PART OF THE DIRECTOR'S OFFICIAL DUTIES. THE DIRECTOR MAY NOT
6 OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC
7 WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER. THIS SECTION DOES NOT
8 REQUIRE WRITTEN CONSENT OF THE INSURER BEFORE THE DIRECTOR SHARES OR
9 RECEIVES CONFIDENTIAL DOCUMENTS, MATERIALS OR OTHER CGAD-RELATED
10 INFORMATION PURSUANT TO SUBSECTION C OF THIS SECTION.

11 B. THE DIRECTOR OR A PERSON WHO RECEIVES DOCUMENTS, MATERIALS OR
12 OTHER CGAD-RELATED INFORMATION, THROUGH EXAMINATION OR OTHERWISE, WHILE
13 ACTING UNDER THE AUTHORITY OF THE DIRECTOR OR WITH WHOM THE DOCUMENTS,
14 MATERIALS OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS ARTICLE IS NOT
15 ALLOWED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY
16 CONFIDENTIAL DOCUMENTS, MATERIALS OR INFORMATION SUBJECT TO SUBSECTION A
17 OF THIS SECTION.

18 C. IN ORDER TO ASSIST IN THE PERFORMANCE OF THE DIRECTOR'S
19 REGULATORY DUTIES, THE DIRECTOR MAY:

20 1. ON REQUEST, SHARE DOCUMENTS, MATERIALS OR OTHER CGAD-RELATED
21 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
22 MATERIALS OR INFORMATION SUBJECT TO SUBSECTION A OF THIS SECTION,
23 INCLUDING PROPRIETARY AND TRADE SECRET DOCUMENTS AND MATERIALS, WITH OTHER
24 STATE, FEDERAL AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES, INCLUDING
25 MEMBERS OF A SUPERVISORY COLLEGE AS DEFINED IN SECTION 20-481, WITH THE
26 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND WITH THIRD-PARTY
27 CONSULTANTS PURSUANT TO SECTION 20-492.05, IF THE RECIPIENT AGREES IN
28 WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE
29 CGAD-RELATED DOCUMENTS, MATERIALS OR OTHER INFORMATION AND VERIFIES IN
30 WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

31 2. RECEIVE DOCUMENTS, MATERIALS OR OTHER CGAD-RELATED INFORMATION,
32 INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS OR
33 INFORMATION, INCLUDING PROPRIETARY AND TRADE-SECRET INFORMATION OR
34 DOCUMENTS, FROM REGULATORY OFFICIALS OF OTHER STATE, FEDERAL AND
35 INTERNATIONAL FINANCIAL REGULATORY AGENCIES, INCLUDING MEMBERS OF A
36 SUPERVISORY COLLEGE AS DEFINED IN SECTION 20-481, AND FROM THE NATIONAL
37 ASSOCIATION OF INSURANCE COMMISSIONERS AND SHALL MAINTAIN AS CONFIDENTIAL
38 OR PRIVILEGED ANY DOCUMENT, MATERIAL OR INFORMATION RECEIVED WITH NOTICE
39 OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS
40 OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL OR
41 INFORMATION.

42 D. THE SHARING OF INFORMATION AND DOCUMENTS BY THE DIRECTOR
43 PURSUANT TO THIS ARTICLE DOES NOT CONSTITUTE A DELEGATION OF REGULATORY
44 AUTHORITY OR RULEMAKING, AND THE DIRECTOR IS SOLELY RESPONSIBLE FOR THE
45 ADMINISTRATION, EXECUTION AND ENFORCEMENT OF THIS ARTICLE.

1 E. THE DISCLOSURE OF CGAD-RELATED INFORMATION OR DOCUMENTS TO THE
2 DIRECTOR OR AS A RESULT OF SHARING THE INFORMATION AND DOCUMENTS AS
3 AUTHORIZED IN THIS ARTICLE DOES NOT CONSTITUTE A WAIVER OF ANY APPLICABLE
4 PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS, PROPRIETARY AND
5 TRADE-SECRET MATERIALS OR OTHER CGAD-RELATED INFORMATION.

6 20-492.05. Third-party consultants; confidentiality standards

7 A. THE DIRECTOR MAY RETAIN, AT THE INSURER'S EXPENSE, THIRD-PARTY
8 CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES, ACCOUNTANTS AND OTHER EXPERTS
9 NOT OTHERWISE A PART OF THE DIRECTOR'S STAFF, AS MAY BE REASONABLY
10 NECESSARY TO ASSIST THE DIRECTOR IN REVIEWING THE CGAD AND RELATED
11 INFORMATION OR THE INSURER'S COMPLIANCE WITH THIS ARTICLE.

12 B. PERSONS WHO ARE RETAINED UNDER SUBSECTION A OF THIS SECTION ARE
13 UNDER THE DIRECTION AND CONTROL OF THE DIRECTOR AND SHALL ACT IN A PURELY
14 ADVISORY CAPACITY.

15 C. THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND
16 THIRD-PARTY CONSULTANTS ARE SUBJECT TO THE SAME CONFIDENTIALITY STANDARDS
17 AND REQUIREMENTS AS THE DIRECTOR.

18 D. AS PART OF THE RETENTION PROCESS, A THIRD-PARTY CONSULTANT SHALL
19 VERIFY TO THE DIRECTOR, WITH NOTICE TO THE INSURER, THAT THE THIRD-PARTY
20 CONSULTANT DOES NOT HAVE A CONFLICT OF INTEREST AND THAT THE THIRD-PARTY
21 CONSULTANT HAS INTERNAL PROCEDURES IN PLACE TO MONITOR COMPLIANCE WITH A
22 CONFLICT AND TO COMPLY WITH THE CONFIDENTIALITY STANDARDS AND REQUIREMENTS
23 OF THIS ARTICLE.

24 E. A WRITTEN AGREEMENT WITH THE NATIONAL ASSOCIATION OF INSURANCE
25 COMMISSIONERS OR A THIRD-PARTY CONSULTANT GOVERNING SHARING AND USE OF
26 INFORMATION PROVIDED PURSUANT TO THIS ARTICLE SHALL CONTAIN ALL OF THE
27 FOLLOWING PROVISIONS AND EXPRESSLY REQUIRE THE WRITTEN CONSENT OF THE
28 INSURER BEFORE MAKING PUBLIC INFORMATION PROVIDED UNDER THIS ARTICLE:

29 1. SPECIFIC PROCEDURES AND PROTOCOLS FOR MAINTAINING THE
30 CONFIDENTIALITY AND SECURITY OF CGAD-RELATED INFORMATION THAT IS SHARED
31 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR A THIRD-PARTY
32 CONSULTANT PURSUANT TO THIS ARTICLE.

33 2. PROCEDURES AND PROTOCOLS FOR SHARING BY THE NATIONAL ASSOCIATION
34 OF INSURANCE COMMISSIONERS ONLY WITH OTHER STATE REGULATORS FROM STATES IN
35 WHICH THE INSURANCE GROUP HAS DOMICILED INSURERS. THE AGREEMENT SHALL
36 PROVIDE THAT THE RECIPIENT AGREE IN WRITING TO MAINTAIN THE
37 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE CGAD-RELATED DOCUMENTS,
38 MATERIALS OR OTHER INFORMATION AND VERIFY IN WRITING THE LEGAL AUTHORITY
39 TO MAINTAIN CONFIDENTIALITY.

40 3. A PROVISION THAT SPECIFIES THAT OWNERSHIP OF THE CGAD-RELATED
41 INFORMATION THAT IS SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE
42 COMMISSIONERS OR A THIRD-PARTY CONSULTANT REMAIN WITH THE DEPARTMENT AND
43 THAT THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' OR THIRD-PARTY
44 CONSULTANT'S USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF THE
45 DIRECTOR.

1 4. A PROVISION THAT PROHIBITS THE NATIONAL ASSOCIATION OF INSURANCE
2 COMMISSIONERS OR A THIRD-PARTY CONSULTANT FROM STORING THE INFORMATION
3 SHARED PURSUANT TO THIS ARTICLE IN A PERMANENT DATABASE AFTER THE
4 UNDERLYING ANALYSIS IS COMPLETED.

5 5. A PROVISION THAT REQUIRES THE NATIONAL ASSOCIATION OF INSURANCE
6 COMMISSIONERS OR A THIRD-PARTY CONSULTANT TO PROVIDE PROMPT NOTICE TO THE
7 DIRECTOR AND TO THE INSURER OR INSURANCE GROUP REGARDING A SUBPOENA,
8 REQUEST FOR DISCLOSURE OR REQUEST FOR PRODUCTION OF THE INSURER'S
9 CGAD-RELATED INFORMATION.

10 6. A REQUIREMENT THAT THE NATIONAL ASSOCIATION OF INSURANCE
11 COMMISSIONERS OR A THIRD-PARTY CONSULTANT CONSENT TO INTERVENTION BY AN
12 INSURER IN ANY JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NATIONAL
13 ASSOCIATION OF INSURANCE COMMISSIONERS OR A THIRD-PARTY CONSULTANT MAY BE
14 REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED
15 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR A THIRD-PARTY
16 CONSULTANT PURSUANT TO THIS ARTICLE.

17 20-492.06. Civil penalties

18 IF AN INSURER FAILS WITHOUT JUST CAUSE TO TIMELY FILE THE CGAD AS
19 REQUIRED IN THIS ARTICLE, AFTER NOTICE AND A HEARING, THE DIRECTOR MAY
20 IMPOSE A CIVIL PENALTY OF \$20 FOR EACH DAY'S DELAY NOT TO EXCEED \$2,500.
21 THE DIRECTOR SHALL COLLECT THE CIVIL PENALTY AND DEPOSIT THE MONIES IN THE
22 STATE GENERAL FUND. THE DIRECTOR MAY REDUCE THE PENALTY IF THE INSURER
23 DEMONSTRATES TO THE DIRECTOR THAT THE IMPOSITION OF THE PENALTY WOULD
24 CONSTITUTE A FINANCIAL HARDSHIP TO THE INSURER.

25 Sec. 2. Exemption from rulemaking requirements

26 For the purposes of this act, the department of insurance is exempt
27 from the rulemaking requirements of title 41, chapter 6, Arizona Revised
28 Statutes, for one year after the effective date of this act.

29 Sec. 3. Nonseverability

30 If section 20-492.04, Arizona Revised Statutes, as added by this
31 act, is finally adjudicated as invalid, the entire act is void.

APPROVED BY THE GOVERNOR MAY 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2019.