

**D-1**

**DEPARTMENT OF HEALTH SERVICES (R20-0506)**

Title 9, Chapter 6, Article 8, Assaults on Public Safety Employees and Volunteers

**Amend:** Article 8, R9-6-801



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT:** Department of Health Services  
Title 9, Chapter 6, Article 8, Assaults on Public Safety Employees and  
Volunteers

**Amend:** Article 8

**Amend:** R9-6-801

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This Notice of Final Expedited Rulemaking from the Department of Health Services seeks to amend rules in Title 9, Chapter 6, Article 8, relating to assaults on public safety employees and volunteers. This expedited rulemaking seeks to amend Article 8, specifically, R9-6-801, in order to comply with statute A.R.S. § 13-121, which was amended by Laws 2019, Ch. 97. The amendment adds hospital employees to those who may "petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne disease or other disease specified in the petition." The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on December 19, 2019

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

Yes. The Department states the rule needs to be amended in order to comply with A.R.S. § 13-1210, which was amended by Laws 2019, Ch. 97, by adding hospital employees to

those who may petition the court to test another person for the human immunodeficiency virus, common blood borne disease or other diseases specified by the petition, Therefore, this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(4).

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 fees, or contain a fee increase.

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

The Department indicates they did not receive any public or stakeholder comments.

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

No. There were no changes made between the proposed rules and final expedited rulemaking.

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

Not applicable. There is no corresponding federal law for these rules.

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

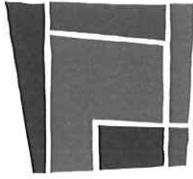
Not applicable. The rules do not require a permit or license.

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

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

**9. Conclusion**

As mentioned above, the Department is conducting this expedited rulemaking in order to comply with statute, A.R.S. § 13-1210 which was amended by Laws 2019, Ch. 97. If the Council approves this expedited rulemaking, the rules 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.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

March 24, 2020

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

Nicole Sornsin, Chair

Governor's Regulatory Review Council

Arizona Department of Administration

100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 8, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: March 23, 2020
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Laws 2019, Ch. 97, amends A.R.S. § 13-1210 by adding hospital employees to those who may "petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition." After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department has revised the rule by expedited rulemaking to make this change to comply with the requirements in A.R.S. § 13-1210. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either adopts or incorporates by reference, without material change, federal statutes and regulations, or clarifies language of a rule without changing its effect. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4).
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 for 9 A.A.C. 6, Article 8 does not relate to a five-year-review report.

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

4. A list of all items enclosed:
- a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
  - b. Statutory authority

The Department's point of contact for questions about the rulemaking documents is Stacie Gravito at [Stacie.Gravito@azdhs.gov](mailto:Stacie.Gravito@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:scg

Enclosures

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

**NOTICE OF FINAL EXPEDITED RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES**  
**COMMUNICABLE DISEASES AND INFESTATIONS**  
**ARTICLE 8. ASSAULTS ON PUBLIC SAFETY EMPLOYEES AND VOLUNTEERS**

**PREAMBLE**

1. 

<b><u>Article, Part, of Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
Article 8	Amend
R9-6-801	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. §§ 36-136(A)(7) and 36-136(G)  
Implementing Statutes: A.R.S. §§ 13-1210 and 36-136(I)(1), and Laws 2019, Ch. 97
  
3. **The effective date of the rules:**  
The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
  
4. **Citations to all related notices published in the Register that pertain to the record of the final expedited rulemaking:**  
Notice of Docket Opening: 26 A.A.R. 291, February 14, 2020  
Notice of Proposed Expedited Rulemaking: 26 A.A.R. 429, March 13, 2020
  
5. **The agency’s contact person who can answer questions about the rulemaking:**  
Name: Ken Komatsu, State Epidemiologist  
Address: Arizona Department of Health Services  
Public Health Preparedness  
150 N. 18th Ave., Suite 100  
Phoenix, AZ 85007-3248  
Telephone: (602) 364-3909  
Fax: (602) 364-3199  
E-mail: Ken.Komatsu@azdhs.gov  
or  
Name: Stephanie Elzenga, Acting Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stephanie.Elzenga@azdhs.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 rulemaking:**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” A.R.S. § 13-1210 authorizes specific individuals and their employing entities to petition for court-ordered testing of the blood of the alleged perpetrator of an assault on the individual. The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 8, rules to implement these statutes. Laws 2019, Ch. 97, amends A.R.S. § 13-1210 by adding hospital employees to those who may “petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition.” After receiving an exception from the Governor’s rulemaking moratorium established by Executive Order 2019-01, the Department has revised the rule by expedited rulemaking to make this change to comply with the requirements in A.R.S. § 13-1210. The new rules will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either adopts or incorporates by reference, without material change, federal statutes and regulations, or clarifies language of a rule without changing its effect.

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 did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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

There are no other matters prescribed by statute applicable specifically to the Department 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:**

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:**

Federal laws do not apply to the rule.

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

**business in other states:**

No 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 rule was previously made, amended, or repealed as an emergency rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made as an emergency rule.

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

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES**  
**COMMUNICABLE DISEASES AND INFESTATIONS**  
**ARTICLE 8. ASSAULTS ON HOSPITAL EMPLOYEES, PUBLIC SAFETY**  
**EMPLOYEES AND VOLUNTEERS, OR STATE HOSPITAL EMPLOYEES**

Section

R9-6-801. Definitions

**ARTICLE 8. ASSAULTS ON HOSPITAL EMPLOYEES, PUBLIC SAFETY  
EMPLOYEES AND VOLUNTEERS, OR STATE HOSPITAL EMPLOYEES**

**R9-6-801. Definitions**

In addition to the definitions in A.R.S. § 13-1210 and R9-6-101, the following definitions apply in this Article unless otherwise specified:

1. “Employer” means an individual in the senior leadership position with an agency or entity for which a named employee or volunteer works or that individual’s designee.
2. “Named employee or volunteer” means one of the following who is listed as the assaulted individual in a petition, filed under A.R.S. § 13-1210 and granted by a court:
  - a. Hospital employee.
  - ~~a-b.~~ Public safety employee or volunteer, or
  - ~~b-c.~~ Arizona State Hospital employee.
3. “Occupational health provider” means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a named employee or volunteer works.

# Arizona Administrative CODE

9 A.A.C. 6 Supp. 19-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2019 through March 31, 2019

## Title 9



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 9. HEALTH SERVICES

### CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

<a href="#">R9-6-1201.</a>	<a href="#">Definitions .....</a>	<a href="#">81</a>	<a href="#">R9-6-1203.</a>	<a href="#">Tuberculosis Control in Correctional Facilities .</a>	<a href="#">81</a>
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#### Questions about these rules? Contact:

Department: Arizona Department of Health Services  
Address: Public Health Preparedness  
150 N. 18th Ave., Suite 100  
Phoenix, AZ 85007  
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**E-mail:** [Eugene.Livar@azdhs.gov](mailto:Eugene.Livar@azdhs.gov)  
or  
Name: Robert Lane, Chief,  
Department of Health Services  
Telephone: (602) 542-1020  
Fax: (602) 364-1150  
**E-mail:** [Robert.Lane@azdhs.gov](mailto:Robert.Lane@azdhs.gov)

#### The release of this Chapter in Supp. 19-1 replaces Supp. 18-3, 1-82 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

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

### THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

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

### SESSION LAW REFERENCES

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

### EXEMPTIONS FROM THE APA

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

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

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

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

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

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

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



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

**TITLE 9. HEALTH SERVICES**

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*Article 2, consisting of Sections R9-6-201 through R9-6-203, renumbered to Article 5, Sections R9-6-501 through R9-6-503 effective October 19, 1993 (Supp. 93-4).*

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*Article 4, consisting of Sections R9-6-411 through R9-6-419 and R9-6-431 through R9-6-433, repealed effective October 19, 1993 (Supp. 93-4).*

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*Article 5, consisting of Sections R9-6-501 through R9-6-506 and Tables 1 and 2, renumbered to Article 7, Sections R9-6-701 through R9-6-706 and Tables 1 and 2 effective October 19, 1993*

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(Supp. 93-4).

Article 5, consisting of Sections R9-6-501 through R9-6-506 and Tables 1 and 2, adopted effective January 20, 1992 (Supp. 92-1).

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Article 8, consisting of Sections R9-6-801 through R9-6-808, renumbered to Article 4, Sections R9-6-401 through R9-6-408 (Supp. 93-4).

Article 8 consisting of Sections R9-6-801 through R9-6-808 adopted as permanent rules effective May 22, 1989.

Article 8 consisting of Sections R9-6-801 through R9-6-808 readopted as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

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Article 8 consisting of Sections R9-6-801 through R9-6-808 readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Article 8 consisting of Sections R9-6-801 through R9-6-809 readopted as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days.

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## CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

## ARTICLE 1. GENERAL

**R9-6-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
  - a. Either:
    - i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
      - (1) Exhausted directly to the outside of the building containing the room, or
      - (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
    - ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
      - (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
      - (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
  - b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:
    - i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
    - ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.
7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.
8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
  - a. With a communicable disease whose condition is documented:
    - i. By laboratory results that support the presence of the agent that causes the disease;
    - ii. By a health care provider's diagnosis based on clinical observation; or
    - iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
  - b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak; or
  - c. Who has experienced a vaccinia-related adverse event.
14. "Case definition" means the disease-specific criteria that must be met for an individual to be classified as a case.
15. "Chief medical officer" means the senior health care provider in a correctional facility or that individual's designee who is also a health care provider.
16. "Child" means an individual younger than 18 years of age.
17. "Child care establishment" means:
  - a. A "child care facility," as defined in A.R.S. § 36-881;
  - b. A "child care group home," as defined in A.R.S. § 36-897;
  - c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
  - d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.
18. "Clinical signs and symptoms" means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient's description of subjective complaints.
19. "Cohort room" means a room housing only individuals infected with the same agent and no other agent.
20. "Communicable disease" means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. "Communicable period" means the time during which an agent may be transmitted directly or indirectly:
  - a. From an infected individual to another individual;
  - b. From an infected animal, arthropod, or vehicle to an individual; or
  - c. From an infected individual to an animal.
22. "Confirmatory test" means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
23. "Contact" means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
24. "Correctional facility" means any place used for the confinement or control of an individual:
  - a. Charged with or convicted of an offense,
  - b. Held for extradition, or
  - c. Pursuant to a court order for law enforcement purposes.

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25. "Court-ordered subject" means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
26. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
27. "Department" means the Arizona Department of Health Services.
28. "Designated service area" means the same as in R9-18-101.
29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
31. "Emerging or exotic disease" means:
  - a. A new disease resulting from change in an existing organism;
  - b. A known disease not usually found in the geographic area or population in which it is found;
  - c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
  - d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.
33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
34. "Fever" means a temperature of 100.4° F or higher.
35. "Food establishment" has the same meaning as in the document incorporated by reference in A.A.C. R9-8-107.
36. "Food handler" means:
  - a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
  - b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
39. "HBsAg" means hepatitis B surface antigen.
40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
41. "Health care provider" means the same as in A.R.S. § 36-661.
42. "Health education" means supplying to an individual or a group of individuals:
  - a. Information about a communicable disease or options for treatment of a communicable disease, and
  - b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
43. "HIV" means Human Immunodeficiency Virus.
44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.
45. "Infected" or "infection" means when an individual has an agent for a disease in a part of the individual's body where the agent may cause a disease.
46. "Infectious active tuberculosis" means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
47. "Infectious agent" means an agent that can be transmitted to an individual.
48. "Infant" means a child younger than 12 months of age.
49. "Isolate" means:
  - a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
  - b. A pure strain of an agent obtained from a specimen.
50. "Isolation" means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
51. "Laboratory report" means a document that:
  - a. Is produced by a laboratory that conducts a test or tests on a subject's specimen; and
  - b. Shows the outcome of each test, including personal identifying information about the subject.
52. "Local health agency" means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.
53. "Local health officer" means an individual who has daily control and supervision of a local health agency or the individual's designee.
54. "Medical evaluation" means an assessment of an individual's health by a physician, physician assistant, or registered nurse practitioner.
55. "Medical examiner" means an individual:
  - a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or
  - b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.
56. "Multi-drug resistant tuberculosis" means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.
57. "Officer in charge" means the individual in the senior leadership position in a correctional facility or that individual's designee.
58. "Outbreak" means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.
59. "Parent" means a biological or adoptive mother or father.
60. "Person" has the same meaning as in A.R.S. § 1-215.
61. "Petition" means a formal written application to a court requesting judicial action on a matter.
62. "Pharmacy" has the same meaning as in A.R.S. § 32-1901.
63. "Physician" means an individual licensed as a doctor of:
  - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
  - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.
64. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
65. "Pupil" means a student attending a school.
66. "Quarantine" means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communi-

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- cable period, to prevent transmission of the disease if infection occurs.
67. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
68. "Respiratory disease" means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.
69. "Risk factor" means an activity or circumstance that increases the chances that an individual will become infected with or develop a communicable disease.
70. "School" means:
- An "accommodation school," as defined in A.R.S. § 15-101;
  - A "charter school," as defined in A.R.S. § 15-101;
  - A "private school," as defined in A.R.S. § 15-101;
  - A "school," as defined in A.R.S. § 15-101;
  - A college or university;
  - An institution that offers a "private vocational program," as defined in A.R.S. § 32-3001; or
  - An institution that grants a "degree," as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.
72. "Sexual contact" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual's genital area for a non-medical or non-hygienic reason.
73. "Shelter" means:
- A facility or home that provides "shelter care," as defined in A.R.S. § 8-201;
  - A "homeless shelter," as defined in A.R.S. § 16-121; or
  - A "shelter for victims of domestic violence," as defined in A.R.S. § 36-3001.
74. "Significant exposure" means the same as in A.R.S. § 32-3207.
75. "Standard precautions" means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. "Subject" means an individual whose blood or other body fluid has been tested or is to be tested.
77. "Submitting entity" means the same as in A.R.S. § 13-1415.
78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:
- May have or is developing a communicable disease;
  - May have experienced diarrhea, nausea, or vomiting as part of an outbreak; or
  - May have experienced a vaccinia-related adverse event.
79. "Syndrome" means a pattern of signs and symptoms characteristic of a disease.
80. "Test" means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. "Test result" means information about the outcome of a laboratory analysis of a subject's specimen and does not include personal identifying information about the subject.
82. "Treatment" means a procedure or method to cure, improve, or palliate an illness or a disease.
83. "Tuberculosis control officer" means the same as in A.R.S. § 36-711.
84. "Vaccine" means a preparation of a weakened or killed agent, a portion of the agent's structure, or a synthetic substitute for a portion of the agent's structure that, upon administration into the body of an individual or animal, stimulates a response in the body to produce or increase immunity to a particular disease.
85. "Vaccinia-related adverse event" means a reaction to the administration of a vaccine against smallpox that requires medical evaluation of the reaction.
86. "Victim" means an individual on whom another individual is alleged to have committed a sexual offense, as defined in A.R.S. § 13-1415.
87. "Viral hemorrhagic fever" means disease characterized by fever and hemorrhaging and caused by a virus.
88. "Waterborne" means that water serves as a mode of transmission of an infectious agent.
89. "Working day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
 Amended effective September 14, 1990 (Supp. 90-3).  
 Amended effective October 19, 1993 (Supp. 93-4).  
 Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 15 A.A.R. 215, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-102. Release of Information**

A person shall release information, including protected health information as defined in 45 CFR 160.103, to the Department or a local health agency upon request if the information is:

- Requested by the Department or the local health agency for the purpose of:
  - Detecting, preventing, or controlling a communicable disease; or
  - Preventing injury or disability that may result from a communicable disease; and
- In the possession of the person.

**Historical Note**

Adopted effective May 2, 1991 (Supp. 91-2). Former Section R9-6-102 renumbered to R9-6-105, new Section R9-6-102 renumbered from R9-6-106 and amended effective October 19, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-102 renumbered to R9-6-201; new R9-6-102 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 4522, effective December 2, 2008 (Supp. 08-4).

**R9-6-103. Disclosure of Communicable Disease-Related Information to a Good Samaritan**

- A. In this Section, unless otherwise specified, the following definitions apply:
- "Affidavit" means a voluntary declaration or statement of facts that is made in writing and under oath or affirmation.

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2. "Assisted person" means the individual with whom a Good Samaritan alleges interaction constituting a significant exposure risk.
  3. "Available" means in the possession of or accessible by the Designated Officer who is reviewing a disclosure request.
  4. "Communicable disease-related information" has the same meaning as in A.R.S. § 36-661.
  5. "Designated Officer" means an individual appointed by the Director or a local health officer to:
    - a. Review a disclosure request from a Good Samaritan;
    - b. Determine whether disclosure of communicable disease-related information is required under A.R.S. § 36-664(E) and this Section; and
    - c. Respond to the Good Samaritan.
  6. "Director" has the same meaning as in A.R.S. § 36-101.
  7. "Disclosure request" means the information submitted by a Good Samaritan according to A.R.S. § 36-664(E) and subsection (C) or (D).
  8. "Emergency care or assistance" means actions performed by an individual on or for another individual, which are necessary to prevent death or impairment of the health of the other individual.
  9. "Emergency department" has the same meaning as in A.A.C. R9-11-101.
  10. "Good Samaritan" has the same meaning as in A.R.S. § 36-661.
  11. "In writing" means:
    - a. An original document,
    - b. A photocopy,
    - c. A facsimile, or
    - d. An e-mail.
  12. "Medical consultation" means discussion between a Good Samaritan and:
    - a. A physician or a registered nurse practitioner working in an emergency department or urgent care unit;
    - b. An occupational health provider as defined in A.A.C. R9-6-801; or
    - c. Any other health care provider knowledgeable in determining circumstances when post-exposure prophylaxis is necessary.
  13. "Mucous membrane" means a thin, pliable layer of tissue that lines passageways and cavities in the human body that lead to the outside, such as the mouth, gastrointestinal tract, nose, vagina, and urethra.
  14. "Notarized" means signed and dated by a notary.
  15. "Notary" means any individual authorized to perform the acts specified under A.R.S. § 41-313.
  16. "Post-exposure prophylaxis" means treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual.
  17. "Significant exposure risk" has the same meaning as in A.R.S. § 36-661.
  18. "Under oath or affirmation" means a sworn or affirmed statement made by a Good Samaritan to a notary under the penalty of perjury.
  19. "Urgent care unit" has the same meaning as in A.A.C. R9-11-201.
- B.** A significant exposure risk may occur when a Good Samaritan's interaction with an individual results in:
1. A transfer of blood or body fluids from the individual onto the mucous membranes or into breaks in the skin of the Good Samaritan; or
  2. A sharing of airspace between the Good Samaritan and the individual.
- C.** If a Good Samaritan makes a disclosure request to the Department or a local health agency 72 hours or less after an alleged significant exposure risk, the disclosure request shall include:
1. The Good Samaritan's name;
  2. The Good Samaritan's mailing address or e-mail address;
  3. The telephone number at which the Good Samaritan may be reached during a working day;
  4. A description of the accident, fire, or other life-threatening emergency, in which the Good Samaritan rendered emergency care or assistance;
  5. A description of the:
    - a. Emergency care or assistance rendered by the Good Samaritan at the accident, fire, or other life-threatening emergency; and
    - b. Circumstances that the Good Samaritan believes constitute a significant exposure risk;
  6. If known, the name of the assisted person;
  7. If known, the date of birth of the assisted person; and
  8. Any additional information that may identify the assisted person.
- D.** If a Good Samaritan makes a disclosure request to the Department or a local health agency more than 72 hours after an alleged significant exposure risk, the disclosure request shall include:
1. A statement in writing that the Good Samaritan is requesting communicable disease-related information for an assisted person as allowed under A.R.S. § 36-664(E);
  2. Documentation concerning the accident, fire, or other life-threatening emergency in which the Good Samaritan rendered emergency care or assistance; and
  3. A notarized affidavit that contains:
    - a. The information specified in subsections (C)(1) through (8);
    - b. A statement that the Good Samaritan understands that the Good Samaritan may seek medical consultation to determine whether post-exposure prophylaxis for a communicable disease is needed;
    - c. A statement that the Good Samaritan certifies that the declarations contained within the affidavit are truthful to the best of the Good Samaritan's knowledge; and
    - d. The Good Samaritan's signature.
- E.** Within two working days after the Department or a local health agency receives a disclosure request from a Good Samaritan, the Designated Officer shall:
1. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan and communicable disease-related information is available for the assisted person:
    - a. Attempt to contact the Good Samaritan by telephone and provide the Good Samaritan with the communicable disease-related information:
      - i. For the assisted person;
      - ii. Pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person; and
      - iii. Without revealing the assisted person's name;
    - b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that disclosure of communicable disease-related information for one communicable disease does not rule out the possibility that the Good Samaritan was exposed to other communicable diseases about which information is not available to the Designated Officer;

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- c. Attempt to contact the Good Samaritan by telephone and provide to the Good Samaritan information concerning the agent causing the communicable disease for which the Designated Officer is disclosing communicable disease-related information, including:
- A description of the disease or syndrome caused by the agent, including its symptoms;
  - A description of how the agent is transmitted to others;
  - The average window period for the agent;
  - An explanation that exposure to an individual with a communicable disease does not mean that infection has occurred or will occur;
  - Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
  - That it is necessary to notify others that they may be or may have been exposed to the agent through interaction with the Good Samaritan; and
  - The availability of assistance from the Department, local health agencies, or other resources; and
- d. Send to the Good Samaritan in writing:
- The information specified in subsection (E)(1)(a);
  - The notification specified in subsection (E)(1)(b);
  - The information specified in subsection (E)(1)(c); and
  - A statement that the confidentiality of the disclosed communicable disease-related information is protected by A.R.S. §§ 36-664(G) and 36-666(A)(2);
2. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan, but the Designated Officer is unable to provide communicable disease-related information for the assisted person:
- Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that either:
    - Communicable disease-related information, pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, is not available to the Designated Officer; or
    - The Designated Officer is unable to identify the assisted person from the information provided in the Good Samaritan's disclosure request, as specified in subsection (C) or (D);
  - Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that:
    - The Good Samaritan's interaction with the assisted person may pose a significant exposure risk to the Good Samaritan; and
    - The Good Samaritan may seek medical consultation on the need for post-exposure prophylaxis; and
  - Send to the Good Samaritan in writing the notifications specified in subsections (E)(2)(a) and (b); and
3. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) does not indicate a significant exposure risk to the Good Samaritan:
- Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that the Designated Officer will not disclose any available communicable disease-related information for the assisted person; and
  - Send to the Good Samaritan in writing:
    - The notification specified in subsection (E)(3)(a);
    - A statement that the Designated Officer's decision not to disclose communicable disease-related information to the Good Samaritan is based on A.R.S. § 36-664(E) and this Section;
    - The Designated Officer's reasons for not disclosing communicable disease-related information to the Good Samaritan; and
    - A statement that the Good Samaritan has the right to obtain a hearing as specified in A.R.S. § 41-1092.03(B).
- Historical Note**  
Renumbered from R9-6-107 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section renumbered to R9-6-301 by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). New Section made by final rulemaking at 14 A.A.R. 4641, effective January 31, 2009 (Supp. 08-4).
- R9-6-104. Repealed**
- Historical Note**  
Renumbered from R9-6-108 and amended effective October 19, 1993 (Supp. 93-4). Section repealed by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).
- R9-6-105. Renumbered**
- Historical Note**  
Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-105 renumbered to R9-6-107, new Section R9-6-105 renumbered from R9-6-102 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Section renumbered to R9-6-501 by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).
- R9-6-106. Renumbered**
- Historical Note**  
Amended effective June 4, 1980 (Supp. 80-3). Former Section R9-6-112 renumbered and amended as Section R9-6-106 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-106 renumbered to R9-6-102, new Section R9-6-106 adopted effective October 19, 1993 (Supp. 93-4). Section renumbered to R9-6-601 by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).
- Exhibit I-A. Repealed**
- Historical Note**  
New Exhibit I-A made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit I-A repealed by final rulemaking at 15 A.A.R. 215, effective March 7, 2009 (Supp. 09-1).
- R9-6-107. Repealed**

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**Historical Note**

Adopted effective September 14, 1990 (Supp. 90-3). Former Section R9-6-107 renumbered to R9-6-103, new Section R9-6-107 renumbered from R9-6-105 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Section repealed by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**R9-6-108. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and Paragraph (9) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered to R9-6-104 effective October 19, 1993 (Supp. 93-4).

**R9-6-109. Reserved****R9-6-110. Reserved****R9-6-111. Repealed****Historical Note**

Corrected Departmental reference in subsection (C) (Supp. 76-5). Amended effective June 4, 1980 (Supp. 80-3). Repealed effective January 28, 1987 (Supp. 87-1).

**R9-6-112. Renumbered****Historical Note**

Amended effective June 4, 1980 (Supp. 80-3). Former Section R9-6-112 renumbered and amended as Section R9-6-106 effective January 28, 1987 (Supp. 87-1).

**R9-6-113. Repealed****Historical Note**

Former Section R9-6-113 repealed, new Section R9-6-113 adopted effective June 4, 1980 (Supp. 80-3). Amended paragraph 4, effective January 31, 1983 (Supp. 83-1). Repealed effective January 28, 1987 (Supp. 87-1).

**R9-6-114. Repealed****Historical Note**

Corrected Departmental reference in subsections (B) and (C) (Supp. 76-5). Former Section R9-6-114 repealed, new Section R9-6-114 adopted effective June 4, 1980 (Supp. 80-3). Repealed effective January 28, 1987 (Supp. 87-1).

**ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING****R9-6-201. Definitions**

In this Article, unless otherwise specified:

1. "Clinical laboratory" has the same meaning as in A.R.S. § 36-451.
2. "Drug" has the same meaning as in A.R.S. § 32-1901.
3. "Epidemiologic curve" means a graphic display of the number of cases over time.

4. "Normally sterile site" means an anatomic location, or tissue or body fluid from an anatomic location, in which microorganisms are not found in the absence of disease and includes:
  - a. The lower respiratory tract;
  - b. Blood;
  - c. Bone marrow;
  - d. Cerebrospinal fluid;
  - e. Pleural fluid;
  - f. Peritoneal fluid;
  - g. Synovial fluid;
  - h. Pericardial fluid;
  - i. Amniotic fluid;
  - j. Lymph;
  - k. A closed abscess; or
  - l. Another anatomic location other than the skin, mouth, eyes, upper respiratory tract, middle ear, urogenital tract, or gastrointestinal tract.
5. "Health care provider required to report" means a physician, physician assistant, registered nurse practitioner, or dentist who diagnoses, treats, or detects a case or suspect case of a communicable disease listed in Table 2.1 or detects an occurrence listed in Table 2.1.
6. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
7. "Point of contact" means an individual through whom the Department or a local health agency can obtain information upon request.
8. "Whole blood" means human blood from which plasma, erythrocytes, leukocytes, and thrombocytes have not been separated.

**Historical Note**

Former Section R9-6-211 renumbered and amended and subsection (C) renumbered from R9-6-212 and amended effective May 2, 1991 (Supp. 91-2). Former Section R9-6-201 renumbered to R9-6-501, new Section R9-6-201 renumbered from R9-6-601, repealed, and a new Section R9-6-201 adopted effective October 19, 1993 (Supp. 93-4). Former R9-6-201 repealed; new R9-6-201 renumbered from R9-6-102 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-202. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility**

- A. A health care provider required to report shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).
- B. An administrator of a health care institution or correctional facility in which a case or suspect case of a communicable disease listed in Table 2.1 is diagnosed, treated, or detected or an occurrence listed in Table 2.1 is detected shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).
- C. Except as described in subsection (D), for each case, suspect case, or occurrence for which a report on an individual is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care

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institution or correctional facility shall submit a report that includes:

1. The following information about the case or suspect case:
    - a. Name;
    - b. Residential and mailing addresses;
    - c. County of residence;
    - d. Whether the individual is living on a reservation and, if so, the name of the reservation;
    - e. Whether the individual is a member of a tribe and, if so, the name of the tribe;
    - f. Telephone number and, if available, email address;
    - g. Date of birth;
    - h. Race and ethnicity;
    - i. Gender;
    - j. If known, whether the individual is pregnant;
    - k. If known, whether the individual is alive or dead;
    - l. If known, the individual's occupation;
    - m. If the individual is attending or working in a school or child care establishment or working in a health care institution or food establishment, the name and address of the school, child care establishment, health care institution, or food establishment; and
    - n. For a case or suspect case who is a child requiring parental consent for treatment, the name, residential address, telephone number, and, if available, email address of the child's parent or guardian, if known;
  2. The following information about the disease:
    - a. The name of the disease;
    - b. The date of onset of symptoms;
    - c. The date of diagnosis;
    - d. The date of specimen collection;
    - e. Each type of specimen collected;
    - f. Each type of laboratory test completed;
    - g. The date of the result of each laboratory test; and
    - h. A description of the laboratory test results, including quantitative values if available;
  3. If reporting a case or suspect case of tuberculosis:
    - a. The site of infection;
    - b. A description of the treatment prescribed, if any, including:
      - i. The name of each drug prescribed,
      - ii. The dosage prescribed for each drug, and
      - iii. The date of prescription for each drug; and
    - c. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;
  4. If reporting a case or suspect case of chancroid, gonorrhea, or *Chlamydia trachomatis* infection:
    - a. The gender of the individuals with whom the case or suspect case had sexual contact;
    - b. A description of the treatment prescribed, if any, including:
      - i. The name of each drug prescribed,
      - ii. The dosage prescribed for each drug, and
      - iii. The date of prescription for each drug;
    - c. The site of infection; and
    - d. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;
  5. If reporting a case or suspect case of syphilis:
    - a. The information required under subsection (C)(4); and
    - b. Identification of:
      - i. The stage of the disease, or
      - ii. Whether the syphilis is congenital;
  6. If reporting a case of congenital syphilis in an infant, and in addition to the information required under subsection (C)(5) and A.R.S. § 36-694(A), the following information:
    - a. The name and date of birth of the infant's mother;
    - b. The residential address, mailing address, telephone number, and, if available, email address of the infant's mother;
    - c. The date and test results for the infant's mother of the prenatal syphilis test required in A.R.S. § 36-693; and
    - d. If the prenatal syphilis test of the infant's mother indicated that the infant's mother was infected with syphilis:
      - i. Whether the infant's mother received treatment for syphilis,
      - ii. The name and dosage of each drug prescribed to the infant's mother for treatment of syphilis and the date each drug was prescribed, and
      - iii. The name and phone number of the health care provider required to report who treated the infant's mother for syphilis;
  7. The name, address, telephone number, and, if available, email address of the individual making the report; and
  8. The name, address, telephone number, and, if available, email address of the:
    - a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (C)(7); or
    - b. Health care institution or correctional facility, if reporting under subsection (B).
- D.** For each outbreak for which a report is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:
1. A description of the signs and symptoms;
  2. If possible, a diagnosis and identification of suspected sources;
  3. The number of known cases and suspect cases;
  4. A description of the location and setting of the outbreak;
  5. The name, address, telephone number, and, if available, email address of the individual making the report; and
  6. The name, address, telephone number, and, if available, email address of the:
    - a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (D)(5); or
    - b. Health care institution or correctional facility, if reporting under subsection (B).
- E.** When an HIV-related test is ordered for an infant who was perinatally exposed to HIV to determine whether the infant is infected with HIV, the health care provider who orders the HIV-related test or the administrator of the health care institution in which the HIV-related test is ordered shall:
1. Report the results of the infant's HIV-related test to the Department, either personally or through a representative, within five working days after receiving the results of the HIV-related test;
  2. Include the following information in the report specified in subsection (E)(1):
    - a. The name and date of birth of the infant;
    - b. The residential address, mailing address, and telephone number of the infant;
    - c. The name and date of birth of the infant's mother;
    - d. The date of the last medical evaluation of the infant;
    - e. The types of HIV-related tests ordered for the infant;

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- f. The dates of the infant's HIV-related tests;
  - g. The results of the infant's HIV-related tests; and
  - h. The ordering health care provider's name, address, and telephone number; and
3. Include with the report specified in subsection (E)(1) a report for the infant's mother including the following information:
- a. The name and date of birth of the infant's mother;
  - b. The residential address, mailing address, and telephone number of the infant's mother;
  - c. The date of the last medical evaluation of the infant's mother;
  - d. The types of HIV-related tests ordered for the infant's mother;
  - e. The dates of the HIV-related tests for the infant's mother;
  - f. The results of the HIV-related tests for the infant's mother;
  - g. What HIV-related risk factors the infant's mother has;
  - h. Whether the infant's mother delivered the infant vaginally or by C-section;
  - i. Whether the infant's mother was receiving HIV-related drugs prior to the infant's birth to reduce the risk of perinatal transmission of HIV; and
- j. The name, address, and telephone number of the health care provider who ordered the HIV-related tests for the infant's mother.

**Historical Note**

Renumbered from R9-6-213 and amended effective May 2, 1991 (Supp. 91-2). Former Section R9-6-202 renumbered to R9-6-502, new Section R9-6-202 renumbered from R9-6-602 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 4467, effective December 1, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

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

New Table 1 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Table 1 amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Table 1 repealed by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

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**Table 2.1. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility**

☒*,O	Amebiasis	☎	Glanders	O	Respiratory disease in a health care institution or correctional facility
☒	Anaplasmosis	☒	Gonorrhea	☎*	Rubella (German measles)
☎	Anthrax	☎	<i>Haemophilus influenzae</i> , invasive disease	☎	Rubella syndrome, congenital
☒	Arboviral infection	☒	Hansen's disease (Leprosy)	☎*,O	Salmonellosis
☒	Babesiosis	☎	Hantavirus infection	O	Scabies
☒	Basidiobolomycosis	☎	Hemolytic uremic syndrome	☎*,O	Shigellosis
☎	Botulism	☎*,O	Hepatitis A	☎	Smallpox
☎	Brucellosis	☒	Hepatitis B and Hepatitis D	☎	Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever)
☒*,O	Campylobacteriosis	☒	Hepatitis C	☒	Streptococcal group A infection, invasive disease
☒	Chagas infection and related disease (American trypanosomiasis)	☒*,O	Hepatitis E	☒	Streptococcal group B infection in an infant younger than 90 days of age, invasive disease
☒	Chancroid	☒	HIV infection and related disease	☒	<i>Streptococcus pneumoniae</i> infection (pneumococcal invasive disease)
☎	Chikungunya	☎	Influenza-associated mortality in a child	☒ <sup>1</sup>	Syphilis
☒	<i>Chlamydia trachomatis</i> infection	☎	Legionellosis (Legionnaires' disease)	☒*,O	Taeniasis
☎*	Cholera	☎	Leptospirosis	☒	Tetanus
☒	Coccidioidomycosis (Valley Fever)	☎	Listeriosis	☒	Toxic shock syndrome
☒	Colorado tick fever	☒	Lyme disease	☎	Trichinosis
O	Conjunctivitis, acute	☎	Lymphocytic choriomeningitis	☎	Tuberculosis, active disease
☒	Creutzfeldt-Jakob disease	☒	Malaria	☎	Tuberculosis latent infection in a child 5 years of age or younger (positive screening test result)
☎*,O	Cryptosporidiosis	☎	Measles (rubeola)	☎	Tularemia
☎	<i>Cyclospora</i> infection	☎	Melioidosis	☎	Typhoid fever
☒	Cysticercosis	☎	Meningococcal invasive disease	☎	Typhus fever
☎	Dengue	☎	Mumps	☎	Vaccinia-related adverse event
O	Diarrhea, nausea, or vomiting	☎	Novel coronavirus infection (e.g., SARS or MERS)	☎	Vancomycin-resistant or Vancomycin-intermediate <i>Staphylococcus aureus</i>
☎	Diphtheria	☎	Pertussis (whooping cough)	☒	Varicella (chickenpox)
☒	Ehrlichiosis	☎	Plague	☎*,O	<i>Vibrio</i> infection
☎	Emerging or exotic disease	☎	Poliomyelitis (paralytic or non-paralytic)	☎	Viral hemorrhagic fever
☎	Encephalitis, parasitic	☒	Psittacosis (ornithosis)	☒	West Nile virus infection
☎	Encephalitis, viral	☎	Q fever	☎	Yellow fever
☎	<i>Escherichia coli</i> , Shiga toxin-producing	☎	Rabies in a human	☎*,O	Yersiniosis (enteropathogenic <i>Yersinia</i> )
☒*,O	Giardiasis	☎	Relapsing fever (borreliosis)	☎	Zika virus infection

**Key:**

☎ Submit a report by telephone or through an electronic reporting system authorized by the Department within 24 hours after a case or suspect case is diagnosed, treated, or detected, or an occurrence is detected.

\* Submit a report within 24 hours after a case or suspect case is diagnosed, treated, or detected, instead of reporting within the general reporting deadline, if the case or suspect case is a food handler or works in a child care establishment or a health care institution.

<sup>1</sup> Submit a report within one working day if the case or suspect case is a pregnant woman.

☎ Submit a report within one working day after a case or suspect case is diagnosed, treated, or detected.

☒ Submit a report within five working days after a case or suspect case is diagnosed, treated, or detected.

O Submit a report within 24 hours after detecting an outbreak.

**Historical Note**

New Table 2.1 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

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**R9-6-203. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

- A. An administrator of a school, child care establishment, or shelter shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.2 and as specified in subsection (B).
- B. For each individual with a disease, infestation, or symptoms of a communicable disease or infestation listed in Table 2.2, or an outbreak of the communicable disease or infestation, an administrator of a school, child care establishment, or shelter shall submit a report that includes:
  1. The name and address of the school, child care establishment, or shelter;
  2. The number of individuals with the disease, infestation, or symptoms;
  3. The date and time that the disease or infestation was detected or that the symptoms began;
  4. The number of rooms, grades, or classes affected and the name of each;
  5. The following information about each individual with the disease, infestation, or symptoms:
    - a. Name;
    - b. Date of birth or age;

- c. If the individual is a child, name and contact information for the individual’s parent or guardian;
- d. Residential address and telephone number; and
- e. Whether the individual is a staff member, a student, a child in care, or a resident;
- 6. The number of individuals attending or residing at the school, child care establishment, or shelter; and
- 7. The name, address, telephone number, and, if available, email address of the individual making the report.

**Historical Note**

Renumbered from R9-6-214 and amended effective May 2, 1991 (Supp. 91-2). Former Section R9-6-203 renumbered to R9-6-503, new Section R9-6-202 adopted effective October 19, 1993 (Supp. 93-4). Former R9-6-203 renumbered to R9-6-206; new R9-6-203 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**Table 2. Renumbered**

**Historical Note**

New Table 2 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Table 2, renumbered to Table 2.2 by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**Table 2.2. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter**

<input checked="" type="checkbox"/> Campylobacteriosis	<input checked="" type="checkbox"/> Mumps
<input type="checkbox"/> Conjunctivitis, acute	<input checked="" type="checkbox"/> Pertussis (whooping cough)
<input checked="" type="checkbox"/> Cryptosporidiosis	<input checked="" type="checkbox"/> Rubella (German measles)
<input type="checkbox"/> Diarrhea, nausea, or vomiting	<input checked="" type="checkbox"/> Salmonellosis
<input checked="" type="checkbox"/> <i>Escherichia coli</i> , Shiga toxin-producing	<input type="checkbox"/> Scabies
<input checked="" type="checkbox"/> <i>Haemophilus influenzae</i> , invasive disease	<input checked="" type="checkbox"/> Shigellosis
<input checked="" type="checkbox"/> Hepatitis A	<input type="checkbox"/> Streptococcal group A infection
<input checked="" type="checkbox"/> Measles	<input checked="" type="checkbox"/> Varicella (chickenpox)
<input checked="" type="checkbox"/> Meningococcal invasive disease	

**Key:**

- Submit a report within 24 hours after detecting a case or suspect case.
- Submit a report within five working days after detecting a case or suspect case.
- Submit a report within 24 hours after detecting an outbreak.

**Historical Note**

New Table 2.2 renumbered from Table 2 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-204. Clinical Laboratory Director Reporting Requirements**

- A. Except as specified in subsection (D), a director of a clinical laboratory that obtains a test result described in Table 2.3 or that receives a specimen for detection of an infectious agent or toxin listed in Table 2.3 shall, either personally or through a representative, submit a report, in a Department-provided format, and, if applicable, an isolate or a specimen to the Department within the time limitation and as specified in Table 2.3 and subsection (B) or (C).
- B. For each specimen for which an immediate report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:
  1. The name and address of the laboratory;
  2. The name and telephone number of the director of the clinical laboratory;
  3. The name and, as available, the address, telephone number, and email address of the subject;
  4. The date of birth of the subject;

- 5. The gender of the subject;
- 6. The laboratory identification number;
- 7. The specimen type;
- 8. The date of collection of the specimen;
- 9. The type of test ordered on the specimen; and
- 10. The ordering health care provider’s name, address, telephone number, and, if available, email address.
- C. Except as provided in Table 2.3 and as specified in subsection (D), for each test result for a subject for which a report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:
  1. The name and address of the laboratory;
  2. The name and telephone number of the director of the clinical laboratory;
  3. The name and, as available, the address, telephone number, and email address of the subject;
  4. The date of birth of the subject;
  5. The gender of the subject;
  6. The laboratory identification number;

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- 7. The specimen type;
  - 8. The date of collection of the specimen;
  - 9. The date of the result of the test;
  - 10. The type of test completed on the specimen;
  - 11. The test result, including quantitative values and reference ranges, if applicable; and
  - 12. The ordering health care provider's name, address, telephone number, and, if available, email address.
- D.** When the Arizona State Laboratory obtains a test result from anonymous HIV testing sent to the Arizona State Laboratory as described in R9-6-1005, the director of the Arizona State Laboratory shall, either personally or through a representative:
- 1. Submit a report to the Department within five working days after obtaining a positive test result; and
  - 2. Include in the report the following information:
    - a. The laboratory identification number of the subject;
    - b. The date of birth, gender, race, and ethnicity of the subject;
    - c. The date the specimen was collected;
    - d. The type of tests completed on the specimen;
    - e. The test results, including quantitative values if available; and

- f. The name, address, and telephone number of the person who submitted the specimen to the Arizona State Laboratory.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Former R9-6-204 renumbered to R9-6-302; new R9-6-204 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**Table 3. Repealed**

**Historical Note**

New Table 3 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Table 3 amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Table 3 repealed by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**Table 2.3. Clinical Laboratory Director Reporting Requirements**

☒	<i>Anaplasma</i> spp.	🔔, ①, *	<i>Francisella tularensis</i>	☒	<i>Plasmodium</i> spp.
①, * <sup>4</sup>	Arboviruses	①, * <sup>4,5</sup>	<i>Haemophilus influenzae</i> , from a normally sterile site	①, *	Rabies virus from a human
☒	<i>Babesia</i> spp.	①	Hantavirus	①, * <sup>4</sup>	Rabies virus from an animal
🔔, 📞, *	<i>Bacillus anthracis</i>	① <sup>1</sup>	Hepatitis A virus (anti-HAV-IgM serologies, detection of viral nucleic acid, or genetic sequencing)	☒	Respiratory syncytial virus
①, * <sup>4</sup>	<i>Bordetella pertussis</i>	☒ <sup>1</sup>	Hepatitis B virus (anti-Hepatitis B core-IgM serologies, Hepatitis B surface or envelope antigen serologies, detection of viral nucleic acid, or genetic sequencing)	①, * <sup>4</sup>	<i>Rickettsia</i> spp. – any test result
①, *	<i>Brucella</i> spp.	☒ <sup>1</sup>	Hepatitis C virus	① <sup>1</sup> , *	Rubella virus and anti-rubella-IgM serologies
①, *	<i>Burkholderia mallei</i> and <i>B. pseudomallei</i>	☒ <sup>1</sup>	Hepatitis D virus	①, *	<i>Salmonella</i> spp.
☒, * <sup>4</sup>	<i>Campylobacter</i> spp.	☒ <sup>1</sup> , * <sup>4</sup>	Hepatitis E virus	①, * <sup>4</sup>	<i>Shigella</i> spp.
☒, * <sup>4</sup>	Carbapenem-resistant Enterobacteriaceae (CRE)	☒	HIV—any test result (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing), except from a negative screening test	☒, * <sup>4</sup>	<i>Streptococcus</i> group A, from a normally sterile site
☒	CD <sub>4</sub> -T-lymphocyte count	☒	HIV—any test result for an infant (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing)	☒	<i>Streptococcus</i> group B, from a normally sterile site in an infant younger than 90 days of age
①, * <sup>4</sup>	Chikungunya virus	☒, * <sup>4</sup>	Influenza virus	☒, * <sup>4</sup>	<i>Streptococcus pneumoniae</i> and its drug sensitivity pattern, from a normally sterile site
☒	<i>Chlamydia trachomatis</i>	①, +	<i>Legionella</i> spp. (excluding single serological results)	☒ <sup>1</sup>	<i>Treponema pallidum</i> (syphilis) or rapid plasma reagin
☒	<i>Chlamydia psittaci</i> / <i>Chlamydia psittaci</i>	①	<i>Leptospira</i> spp.	☒	<i>Trypanosoma cruzi</i> (Chagas disease)
🔔, 📞	<i>Clostridium botulinum</i> toxin (botulism)	①	<i>Lymphocytic choriomeningitis</i> virus	①, *	Vancomycin-resistant or Vancomycin-intermediate <i>Staphylococcus aureus</i>
☒, * <sup>4</sup>	<i>Coccidioides</i> spp.	①, *	<i>Listeria</i> spp., from a normally sterile site	🔔, 📞, *	Variola virus (smallpox)

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①	<i>Coxiella burnetti</i>	☎ <sup>1,*</sup>	Measles virus and anti-measles-IgM serologies	①,*	<i>Vibrio</i> spp.
①	<i>Cryptosporidium</i> spp.	☒ <sup>2</sup>	Methicillin-resistant <i>Staphylococcus aureus</i> , from a normally sterile site	📞,☎, *	Viral hemorrhagic fever agent
①	<i>Cyclospora</i> spp.	① <sup>1,*</sup>	Mumps virus and anti-mumps-IgM serologies	☒	West Nile virus
①,* <sup>4</sup>	Dengue virus	①,* <sup>3</sup>	<i>Mycobacterium tuberculosis</i> complex and its drug sensitivity pattern	☎,*	Yellow fever virus
☒	<i>Ehrlichia</i> spp.	☒,* <sup>4</sup>	<i>Neisseria gonorrhoeae</i> and, if performed, the drug sensitivity pattern	📞,☎, *	<i>Yersinia pestis</i> (plague)
📞,☎	Emerging or exotic disease agent	☎,*	<i>Neisseria meningitidis</i> , from a normally sterile site	①,*	<i>Yersinia</i> spp. (other than <i>Y. pestis</i> )
☒	<i>Entamoeba histolytica</i>	①	Norovirus	①,*	Zika virus
①,*	<i>Escherichia coli</i> , <i>Shiga</i> toxin-producing	☎	Novel coronavirus infection (e.g., SARS or MERS)		

**Key:**

- 📞 Submit a report immediately after receiving one specimen for detection of the agent. Report the receipt of subsequent specimens within five working days after receipt.
- ☎ Submit a report within 24 hours after obtaining a positive test result.
- ① Submit a report within one working day after obtaining a positive test result.
- ☒ Submit a report within five working days after obtaining a positive test result or a test result specified in Table 2.3.
- \* Submit an isolate of the organism for each positive culture, if available, or a specimen for each positive test result to the Arizona State Laboratory within one working day.
- + Submit an isolate of the organism for each positive culture to the Arizona State Laboratory within one working day.

When appearing after one of the symbols above, the following modify the requirement:

- <sup>1</sup> When reporting a positive result for any of the specified tests, report the results of all other tests performed for the subject as part of the disease panel or as a reflex test.
- <sup>2</sup> Submit a report only when an initial positive result is obtained for an individual.
- <sup>3</sup> Submit an isolate or specimen of the organism, as applicable, only when an initial positive result is obtained for an individual, when a change in resistance pattern is detected, or when a positive result is obtained ≥ 12 months after the initial positive result is obtained for an individual.
- <sup>4</sup> Submit an isolate or specimen, as applicable, only by request.
- <sup>5</sup> Submit an isolate of the organism, if available, or a specimen when a positive result is obtained for an individual < 5 years of age.

**Historical Note**

Table 2.3 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-205. Reporting Requirements for a Pharmacist or an Administrator of a Pharmacy**

- A. A pharmacist who fills an individual’s initial prescription for two or more of the drugs listed in subsection (B) or an administrator of a pharmacy in which an individual’s initial prescription for two or more of the drugs listed in subsection (B) is filled shall, either personally or through a representative, submit a report, in a Department-provided format, that complies with subsection (C) to the Department within five working days after the prescription is filled.
- B. Any combination of two or more of the following drugs when initially prescribed for an individual triggers the reporting requirement of subsection (A):
  1. Isoniazid,
  2. Streptomycin,
  3. Any rifamycin,
  4. Pyrazinamide, or
  5. Ethambutol.
- C. A pharmacist or an administrator of a pharmacy shall submit a report required under subsection (A) that includes:
  1. The following information about the individual for whom the drugs are prescribed:
    - a. Name,
    - b. Address,
    - c. Telephone number, and
    - d. Date of birth; and
  2. The following information about the prescription:
    - a. The name of the drugs prescribed,

- b. The date of prescription, and
- c. The name and telephone number of the prescribing health care provider.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-206. Local Health Agency Responsibilities Regarding Communicable Disease Reports**

- A. The Department shall notify each local health agency of the format to be used by:
  1. A health care provider required to report when making a report required under R9-6-202(A) and Table 2.1;
  2. An administrator of a health care institution or correctional facility when making a report required under R9-6-202(B) and Table 2.1; and
  3. An administrator of a school, child care establishment, or shelter when making a report required under R9-6-203(A) and Table 2.2.
- B. A local health agency shall inform health care providers required to report and administrators of health care institutions, correctional facilities, schools, child care establishments, and shelters of the format to use when making a report, as specified in subsection (A).

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- C. Except as specified in Table 2.4 and Article 3, a local health agency shall provide to the Department the information contained in each report of a case, suspect case, or occurrence received by the local health agency under R9-6-202 or R9-6-203, including any report of disease in a nonresident of the jurisdiction who is or has been diagnosed or treated in the jurisdiction, within five working days after receipt and shall specify:
1. Which of the following best describes the individual identified in each report:
    - a. The individual meets the case definition for a case of the specific disease,
    - b. The individual is a suspect case,
    - c. The individual does not meet the case definition for a case or suspect case of the specific disease, or
    - d. The local health agency has not yet determined the status of the disease in the individual; and
  2. The status of the epidemiologic investigation for each report.
- D. Except as specified in Table 2.4 and Article 3, a local health agency shall submit to the Department a report, in a Department-provided format, of an epidemiologic investigation conducted by the local health agency:
1. In response to a report of a case, suspect case, or occurrence:
    - a. Submitted under R9-6-202 or R9-6-203, or
    - b. About which the local health agency was notified by the Department;
  2. Within 30 calendar days after receiving the report submitted under R9-6-202 or R9-6-203 or notification by the Department;
  3. If an epidemiologic investigation is required for the reported disease under Article 3; and
  4. Including in the report of the epidemiologic investigation:
    - a. The information described in:
      - i. R9-6-202(C) for a report submitted under R9-6-202,
      - ii. R9-6-203(B) for a report submitted under R9-6-203, or
      - iii. R9-6-202(C) for a report about which the Department notified the local health agency;
    - b. A description of all laboratory or other test results, performed in addition to the laboratory tests described in R9-6-202(C) and contributing to the diagnosis;
    - c. A description of the case's symptoms of the disease and other signs that may be observed that indicate that the individual may have the disease, if applicable;
    - d. A classification of the case according to the case definition;
    - e. A description of the condition or status of the case at the end of the epidemiologic investigation;
    - f. A description of the case's specific risk factors for acquiring the disease or other epidemiologic evidence of how the case acquired the infection that resulted in the disease;
    - g. A description of how the local health agency provided or arranged for the case to receive health education about the nature of the disease and how to prevent transmission or limit disease progression;
    - h. A description of the case's specific risk factors for transmitting the disease considered by the local health agency when conducting an assessment of contacts:
      - i. A description of the control measures used by the local health agency to reduce the spread of the disease; and
      - j. The date the report of the case, suspect case, or occurrence was submitted or the Department notified the local health agency.
- E. For each instance when the local health agency receives a report or reports indicating an outbreak or possible outbreak, the local health agency shall:
1. Within 24 hours after receiving the report or reports, provide to the Department, in a Department-provided format, the following information:
    - a. The location of the outbreak or possible outbreak;
    - b. If known, the number of cases and suspect cases;
    - c. The date that the outbreak was reported or the dates that cases suggestive of an outbreak were reported;
    - d. The setting of the outbreak or possible outbreak;
    - e. The name of the disease suspected or known to be the cause of the outbreak or possible outbreak; and
    - f. The name and telephone number of an individual at the local health agency who can serve as a point of contact regarding the outbreak or possible outbreak; and
  2. Within 30 calendar days after receiving the last report or reports associated with the outbreak, submit to the Department a report, in a Department-provided format, of the epidemiologic investigation conducted by the local health agency in response to the outbreak or possible outbreak, including:
    - a. A description of the outbreak location and setting;
    - b. The date that the local health agency was notified of the outbreak;
    - c. A description of how the local health agency verified the outbreak;
    - d. The number of individuals reported to be ill during the outbreak;
    - e. The number of individuals estimated to be at risk for illness as a result of the outbreak;
    - f. The specific case definition used;
    - g. A summary profile of the signs and symptoms;
    - h. An epidemiologic curve;
    - i. A copy of the laboratory evidence collected, including all laboratory test results, for all specimens submitted for testing to a laboratory other than the Arizona State Laboratory;
    - j. Hypotheses of how the outbreak occurred;
    - k. A description of the control measures used and the dates the control measures were implemented;
    - l. The conclusions drawn based upon the results of the epidemiologic investigation;
    - m. Recommendations for preventing future outbreaks; and
    - n. The name, address, and telephone number of the individual making the report to the Department.

**Historical Note**

Section renumbered from R9-6-203 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

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

New Table 4 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Table 4

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repealed by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

Table 2.4. Local Health Agency Reporting Requirements

☒,➔	Amebiasis	☒	Gonorrhea	①,➔,*	Rubella (German measles)
☒,➔	Anaplasmosis	①,➔	<i>Haemophilus influenzae</i> , invasive disease	☒,➔,*	Rubella syndrome, congenital
☒,➔,*	Anthrax	☒,➔	Hansen’s disease (Leprosy)	①,➔	Salmonellosis
☒,➔	Arboviral infection	①,➔	Hantavirus infection	①,➔	Shigellosis
☒,➔	Babesiosis	①,➔	Hemolytic uremic syndrome	☒,➔,*	Smallpox
☒,➔	Basidiobolomycosis	①,➔	Hepatitis A	①,➔	Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever)
☒,➔,*	Botulism	☒,➔	Hepatitis B and Hepatitis D	☒	Streptococcal group A infection, invasive disease
☒,➔,*	Brucellosis	☒,➔	Hepatitis E	☒	Streptococcal group B infection in an infant younger than 90 days of age, invasive disease
☒,➔	Campylobacteriosis	☒,➔	HIV infection and related disease	☒	<i>Streptococcus pneumoniae</i> infection, (pneumococcal invasive disease)
☒,➔	Chagas infection and related disease (American Trypanosomiasis)	①,➔	Influenza-associated mortality in a child	☒,➔	Syphilis
☒,➔	Chancroid ( <i>Haemophilus ducreyi</i> )	①,➔	Legionellosis (Legionnaires’ disease)	☒,➔	Taeniasis
☒,➔	Chikungunya	①,➔	Leptospirosis	☒,➔	Tetanus
☒	<i>Chlamydia trachomatis</i> infection	①,➔,*	Listeriosis	☒,➔	Toxic shock syndrome
①,➔	Cholera	☒,➔	Lyme disease	①,➔	Trichinosis
☒	Coccidioidomycosis (Valley Fever)	①,➔	Lymphocytic choriomeningitis	①,➔,*	Tuberculosis, active disease
☒,➔	Colorado tick fever	☒,➔	Malaria	①,➔	Tuberculosis latent infection in a child five years of age or younger (positive screening test result)
☒,➔	Creutzfeldt-Jakob disease	☒,➔,*	Measles (rubeola)	☒,➔,*	Tularemia
☒,➔	Cryptosporidiosis	①,➔,*	Melioidosis	☒,➔,*	Typhoid fever
☒,➔	<i>Cyclospora</i> infection	☒,➔,*	Meningococcal invasive disease	①,➔	Typhus fever
☒,➔	Cysticercosis	①,➔,*	Mumps	①,➔	Vaccinia-related adverse event
①,➔	Dengue	☒,➔	Novel coronavirus (e.g., SARS or MERS)	①,➔	Vancomycin-resistant or Vancomycin-intermediate <i>Staphylococcus aureus</i>
☒,➔	Diphtheria	①,➔	Pertussis (whooping cough)	①,➔,*	Varicella (chickenpox)
☒,➔	Ehrlichiosis	☒,➔,*	Plague	☒,➔ <sup>1</sup>	<i>Vibrio</i> infection
☒,➔	Emerging or exotic disease	☒,➔,*	Poliomyelitis (paralytic or non-paralytic)	①,➔	Viral hemorrhagic fever
☒,➔	Encephalitis, parasitic	☒,➔	Psittacosis (ornithosis)	☒,➔,*	West Nile virus infection
①,➔	Encephalitis, viral	①,➔	Q Fever	☒,➔,*	Yellow fever
①,➔	<i>Escherichia coli</i> , Shiga toxin-producing	☒,➔,*	Rabies in a human	①,➔,*	Yersiniosis (enteropathogenic <i>Yersinia</i> )
☒,➔	Giardiasis	①,➔	Relapsing fever (borreliosis)	①,➔,*	Zika virus infection
①,➔,*	Glanders				

Key:

- ☒ Notify the Department within 24 hours after receiving a report under R9-6-202 or R9-6-203.
- ① Notify the Department within one working day after receiving a report under R9-6-202 or R9-6-203.
- ☒ Notify the Department within five working days after receiving a report under R9-6-202 or R9-6-203.
- ➔ Submit an epidemiologic investigation report within 30 calendar days after receiving a report under R9-6-202 or R9-6-203 or notification by the Department.

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- \* Ensure that an isolate of the organism for each positive culture, if available, or a specimen for each positive test result is submitted to the Arizona State Laboratory within one working day.
- <sup>1</sup> Submit an epidemiologic investigation report only if a case or suspect case has died as a result of the communicable disease.

**Historical Note**

New Table 2.4 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-207. Federal or Tribal Entity Reporting**

A. To the extent permitted by law, a federal or tribal entity shall comply with the reporting requirements in this Article as follows:

1. If the federal or tribal entity is participating in the diagnosis or treatment of an individual, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for a health care provider;
2. If the federal or tribal entity is operating a facility that provides health care services, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for an administrator of a health care institution;
3. If the federal or tribal entity is operating a correctional facility, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for an administrator of a correctional facility;
4. If the federal or tribal entity is operating a facility that provides child care services, the federal or tribal entity shall comply with the reporting requirements in R9-6-203 and Table 2.2 for an administrator of a child care establishment;
5. If the federal or tribal entity is operating a facility that offers instruction to students in a grade level from kindergarten through grade 12, a college or university, a "private vocational program" as defined in A.R.S. § 32-3001, or an institution that grants a "degree" as defined in A.R.S. § 32-3001, the federal or tribal entity shall comply with the reporting requirements in R9-6-203 and Table 2.2 for an administrator of a school;
6. If the federal or tribal entity is operating a clinical laboratory, the federal or tribal entity shall comply with the reporting requirements in R9-6-204 and Table 2.3 for a clinical laboratory director; and
7. If the federal or tribal entity is operating a facility that provides pharmacy services, the federal or tribal entity shall comply with the reporting requirements in R9-6-205 for an administrator of a pharmacy.

B. For the purposes of this Section, "federal or tribal entity" means a person operating within this state, whether on federal or tribal land or otherwise, under the authority of an agency or other administrative subdivision of the federal government or a tribal nation and who is:

1. Licensed as a doctor of allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of this or another state;
2. Licensed as a physician assistant under the laws of this or another state;
3. Licensed as a registered nurse practitioner under the laws of this or another state;
4. Licensed as a dentist under the laws of this or another state;
5. Operating a facility that provides health care services;
6. Operating a correctional facility;
7. Operating a facility that provides child care services;
8. Operating a facility that offers instruction to students in a grade level from kindergarten through grade 12, a college or university, a "private vocational program" as defined in A.R.S. § 32-3001, or an institution that grants a "degree" as defined in A.R.S. § 32-3001;

9. Operating a clinical laboratory; or
10. Operating a facility that provides pharmacy services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-208. Reserved**

**R9-6-209. Reserved**

**R9-6-210. Reserved**

**R9-6-211. Renumbered**

**Historical Note**

Renumbered to R9-6-201 effective May 2, 1991 (Supp. 91-2).

**R9-6-212. Renumbered**

**Historical Note**

Renumbered to R9-6-201(C) effective May 2, 1991 (Supp. 91-2).

**R9-6-213. Renumbered**

**Historical Note**

Renumbered to R9-6-202 effective May 2, 1991 (Supp. 91-2).

**R9-6-214. Renumbered**

**Historical Note**

Renumbered to R9-6-203 effective May 2, 1991 (Supp. 91-2).

### ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS

**R9-6-301. Definitions**

In this Article, unless otherwise specified:

1. "Aquatic venue" means an artificially constructed structure or modified natural structure that:
  - a. Is used:
    - i. For water contact recreation, as defined in A.A.C. R9-8-801; or
    - ii. To treat a diagnosed injury, illness, or medical condition under the supervision of a health professional, as defined in A.R.S. § 32-3201;
  - b. Is open to all individuals or to all residents of a community, members of a club or camp, individuals being treated by a specific health professional, or patrons of other such establishments; and
  - c. Includes a:
    - i. Natural bathing place as defined in A.A.C. R18-5-201,
    - ii. Public spa as defined in A.A.C. R18-5-201,
    - iii. Public swimming pool as defined in A.A.C. R18-5-201,
    - iv. Semi-artificial bathing place as defined in A.A.C. R18-5-201,
    - v. Semi-public spa as defined in A.A.C. R18-5-201,

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- vi. Semi-public swimming pool as defined in A.A.C. R18-5-201, and
  - vii. Water-play area, an artificially constructed depression in which water issues from showers or other nozzles and drains away to leave little or no standing water.
2. "Blood bank" means a facility where human whole blood or a blood component is collected, prepared, tested, processed, or stored, or from which human whole blood or a blood component is distributed.
  3. "Blood center" means a mobile or stationary facility that procures human whole blood or a blood component that is transported to a blood bank.
  4. "Contact precautions" means, in addition to use of standard precautions:
    - a. Placing an individual in a private room or a cohort room with a distance of three or more feet separating the individual's bed from the bed of another individual; and
    - b. Ensuring the use of a gown and gloves by other individuals when entering the room in which the individual is located.
  5. "Contaminated" means to have come in contact with a disease-causing agent or toxin.
  6. "Disinfection" means killing or inactivating communicable-disease-causing agents on inanimate objects by directly applied chemical or physical means.
  7. "Disinfestation" means any physical, biological, or chemical process to reduce or eliminate undesired arthropod or rodent populations.
  8. "Droplet precautions" means, in addition to use of standard precautions:
    - a. Placing an individual in a private room or a cohort room with a distance of three or more feet and a curtain separating the individual's bed from the bed of another individual;
    - b. Ensuring that the individual wears a mask covering the individual's mouth and nose, if medically appropriate, when not in the room described in subsection (8)(a); and
    - c. Ensuring the use of a mask covering the mouth and nose by other individuals when entering the room in which the individual is located.
  9. "Follow-up" means the practice of investigating and monitoring cases, carriers, contacts, or suspect cases to detect, treat, or prevent disease.
  10. "Incapacitated adult" means an individual older than 18 years of age for whom a guardian has been appointed by a court of competent jurisdiction.
  11. "Isolation precautions" means methods to limit the transmission of an infectious agent, based on the infectious agent and the location of infection in or on the infected individual or animal, that includes isolation of the infected individual or animal and may include any one or combination of the following:
    - a. Standard precautions,
    - b. Contact precautions,
    - c. Droplet precautions, or
    - d. Airborne precautions.
  12. "Midwife" has the same meaning as in A.R.S. § 36-751.
  13. "Multi-drug-resistant organism" means a bacterial agent on a Department-provided list that is known to not be killed or whose growth is not slowed by specific classes of antibiotics.
  14. "Pediculocide" means a shampoo or cream rinse manufactured and labeled for controlling head lice.
  15. "Person in charge" means the individual present at a food establishment who is responsible for the food establishment's operation at the time in question.
  16. "Plasma center" means a facility where the process of plasmapheresis or another form of apheresis is conducted.
  17. "State health officer" means the Director of the Department or the Director's designee.
  18. "Vector" means a living animal, usually a mosquito, tick, flea, or other arthropod, that may transmit an infectious agent to an individual.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-301 repealed; new R9-6-301 renumbered from R9-6-103 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-302. Local Health Agency Control Measures**

A local health agency shall:

1. Review each report received under Article 2 for completeness and accuracy;
2. Confirm each diagnosis;
3. Conduct epidemiologic and other investigations required by this Chapter or in cooperation with the Department;
4. Facilitate notification of known contacts;
5. Conduct surveillance;
6. Determine trends;
7. Implement control measures, quarantines, isolations, and exclusions as required by the Arizona Revised Statutes and this Chapter;
8. Disseminate surveillance information to health care providers;
9. Provide health education to a disease case or contact to reduce the risk of transmission of the respective disease; and
10. Report to the Department, as specified in R9-6-206 and this Article.

**Historical Note**

Renumbered from R9-6-702 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-302 renumbered to R9-6-304; new R9-6-302 renumbered from R9-6-204 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-303. Isolation, Quarantine, Exclusion, and Other Control Measures**

- A.** When a local health agency is required by this Article to isolate or quarantine an individual or group of individuals, the local health agency:
1. Shall issue a written order:
    - a. For isolation or quarantine and other control measures;
    - b. To each individual or group of individuals and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian, except as provided in subsection (A)(2);
    - c. That specifies:
      - i. The isolation or quarantine and other control measure requirements being imposed, includ-

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- ing, if applicable, requirements for physical examinations and medical testing to ascertain and monitor each individual's health status;
  - ii. The identity of each individual or group of individuals subject to the order;
  - iii. The premises at which each individual or group of individuals is to be isolated or quarantined;
  - iv. The date and time at which isolation or quarantine and other control measure requirements begin; and
  - v. The justification for isolation or quarantine and other control measure requirements, including, if known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
- d. That may provide information about existing medical treatment, if available and necessary to render an individual less infectious, and the consequences of an individual's failure to obtain the medical treatment; and
2. May post the written order in a conspicuous place at the premises at which a group of individuals is to be isolated or quarantined if:
- a. The written order applies to the group of individuals, and
  - b. It would be impractical to provide a copy to each individual in the group.
- B.** A local health agency may issue a written order for additional control measures:
- 1. Except as provided in subsection (A)(2), to each affected individual, group of individuals, or person and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian;
  - 2. That specifies:
    - a. The control measure requirements being imposed, including, if applicable, requirements for:
      - i. Being excluded from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment;
      - ii. Avoiding other locations where the individual or an individual in the group of individuals may pose a health risk to other individuals;
      - iii. Observing airborne precautions, droplet precautions, or contact precautions and the methods by which the individual shall comply with the requirement;
      - iv. Prophylaxis or immunization, as applicable, as an alternative to or to reduce the length of exclusion;
      - v. Physical examinations and medical testing to ascertain and monitor the individual's health status; or
      - vi. Not creating a situation where additional individuals may be exposed to the communicable disease;
    - b. The identity of each individual, group of individuals, or person subject to the order;
    - c. The date and time at which the control measure requirements begin; and
    - d. The justification for the control measure requirements, including:
      - i. If known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
      - ii. If applicable, the possible consequences of the individual, group of individuals, or person failing to follow the recommendations of the Department or the local health agency to control the spread of the communicable disease; and
  - 3. That may provide information about the disease, existing medical treatment, if applicable, and the consequences of an individual's failure to comply with the order.
- C.** Within 10 calendar days after the issuing of a written order described in subsection (A) or (B), if a local health agency determines that isolation, quarantine, or other control measure requirements need to continue for more than 10 calendar days after the date of the order, the local health agency shall file a petition for a court order that:
- 1. Authorizes the continuation of isolation, quarantine, or other control measure requirements pertaining to an individual, a group of individuals, or a person;
  - 2. Includes the following:
    - a. The isolation, quarantine, or other control measure requirements being imposed, including, if applicable, requirements for physical examinations and medical testing to ascertain and monitor an individual's health status;
    - b. The identity of each individual, group of individuals, or person subject to isolation, quarantine, or other control measure requirements;
    - c. If applicable, the premises at which each individual or group of individuals is isolated or quarantined;
    - d. The date and time at which isolation, quarantine, or other control measure requirements began; and
    - e. The justification for isolation, quarantine, or other control measure requirements, including, if applicable and known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
  - 3. Is accompanied by the sworn affidavit of a representative of the local health agency or the Department attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
- D.** A local health agency that files a petition for a court order under subsection (C) shall provide notice to each individual, group of individuals, or person identified in the petition according to the Arizona Rules of Civil Procedure, except that notice shall be provided within 24 hours after the petition is filed.
- E.** In the event of noncompliance with a written order issued under subsection (A) or (B), a local health agency may contact law enforcement to request assistance in enforcing the order.
- F.** If the Department determines that isolation, quarantine, or other control measure requirements are necessary, the Department, under A.R.S. § 36-136(G), may take any of the actions specified in subsections (A) through (E).

**Historical Note**

Renumbered from R9-6-703 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-303 renumbered to R9-6-305; new R9-6-303 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-303 renumbered to R9-6-304; new R9-6-303 renumbered from R9-6-388 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-304. Food Establishment Control Measures**

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The person in charge of a food establishment shall ensure compliance with all food handler exclusion requirements in this Article or as ordered by a local health agency or the Department.

**Historical Note**

Renumbered from R9-6-704 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-304 renumbered to R9-6-306; new R9-6-304 renumbered from R9-6-302 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-304 renumbered to R9-6-305; new R9-6-304 renumbered from R9-6-303 by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-305. Control Measures for Multi-drug-resistant Organisms**

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is infected with a multi-drug-resistant organism.
2. An administrator of the correctional facility transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another correctional facility or to a health care institution shall, either personally or through a representative, ensure that the receiving correctional facility or health care institution is informed that the individual is infected with a multi-drug-resistant organism.

**Historical Note**

Renumbered from R9-6-705 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-305 renumbered to R9-6-308; new R9-6-305 renumbered from R9-6-303 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-305 renumbered to R9-6-306; new R9-6-305 renumbered from R9-6-304 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-305 renumbered to R9-6-306; new Section R9-6-305 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-306. Amebiasis**

Case control measures: A local health agency shall:

1. Exclude an amebiasis case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
    - i. Either:
      - (1) Treatment with an amebicide is initiated, and
      - (2) A stool specimen negative for amoebae is obtained from the amebiasis case or suspect case; or
    - ii. The local health agency has determined that the amebiasis case or suspect case is unlikely to infect other individuals; and

- b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported amebiasis case or suspect case; and
3. For each amebiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-706 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-306 renumbered to R9-6-309; new R9-6-306 renumbered from R9-6-304 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-306 renumbered to R9-6-307; new R9-6-306 renumbered from R9-6-305 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-306 renumbered to R9-6-308; new Section R9-6-306 renumbered from R9-6-305 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-307. Anaplasmosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported anaplasmosis case or suspect case; and
2. For each anaplasmosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Former Section R9-6-115, Paragraph (5), renumbered and amended as R9-6-707 effective January 28, 1987 (Supp. 87-1). Former R9-6-307 renumbered to R9-6-310; new R9-6-307 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-307 renumbered to R9-6-308; new R9-6-307 renumbered from R9-6-306 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-307 repealed; new Section R9-6-307 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-308. Anthrax**

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an anthrax case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported anthrax case or suspect case;
3. For each anthrax case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each anthrax case or suspect case is submitted to the Arizona State Laboratory.

B. Environmental control measures: A local health agency shall, in conjunction with the Department and applicable federal agencies, provide or arrange for disinfection of areas or objects contaminated by *Bacillus anthracis* through sterilization by dry heating, incineration of objects, or other appropriate means.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-308 renumbered to R9-6-311; new R9-6-308 renumbered from R9-

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6-305 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-308 renumbered to R9-6-309; new R9-6-308 renumbered from R9-6-307 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-308 renumbered to R9-6-311; new Section R9-6-308 renumbered from R9-6-306 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-309. Arboviral Infection**

- A. Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported arboviral infection case or suspect case;
  2. For each arboviral infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  3. Ensure that each arboviral infection case is provided with health education that includes measures to:
    - a. Avoid mosquito bites, and
    - b. Reduce mosquito breeding sites.
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each arboviral infection case or suspect case and implement vector control measures as necessary.

**Historical Note**

Renumbered from R9-6-708 and amended effective October 19, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-309 renumbered to R9-6-312; new R9-6-309 renumbered from R9-6-306 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-309 renumbered to R9-6-310; new R9-6-309 renumbered from R9-6-308 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-309 renumbered to R9-6-312; new Section R9-6-309 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-310. Babesiosis**

- Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported babesiosis case or suspect case; and
  2. For each babesiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-709 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-310 renumbered to R9-6-313; new R9-6-310 renumbered from R9-6-307 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-310 renumbered to R9-6-311; new R9-6-310 renumbered from R9-6-309 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-310 renumbered to R9-6-313; new Section R9-6-310 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-311. Basidiobolomycosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported basidiobolomycosis case or suspect case; and
2. For each basidiobolomycosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Repealed effective May 2, 1991 (Supp. 91-2). New Section R9-6-311 renumbered from R9-6-710 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-311 renumbered to R9-6-314; new R9-6-311 renumbered from R9-6-308 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-311 renumbered to R9-6-313; new R9-6-311 renumbered from R9-6-310 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-311 renumbered to R9-6-314; new Section R9-6-311 renumbered from R9-6-308 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-312. Botulism**

- A. Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a botulism case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  2. Conduct an epidemiologic investigation of each reported botulism case or suspect case; and
  3. For each botulism case or suspect case:
    - a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
    - b. Ensure that one or more specimens from each botulism case or suspect case are submitted to the Arizona State Laboratory.
- B. Environmental control measures: An individual in possession of:
1. Food known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated food for 10 minutes and then discard it, and
  2. Utensils known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated utensils for 10 minutes before reuse or disposal.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Former R9-6-312 renumbered to R9-6-315; new R9-6-312 renumbered from R9-6-309 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-312 renumbered to R9-6-314; new R9-6-312 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-312 renumbered to R9-6-316; new Section R9-6-312 renumbered from R9-6-309 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-313. Brucellosis**

- Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported brucellosis case or suspect case;
  2. For each brucellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  3. Ensure that an isolate or a specimen, as available, from each brucellosis case is submitted to the Arizona State Laboratory.

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**Historical Note**

Renumbered from R9-6-711 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-313 renumbered to R9-6-316; new R9-6-313 renumbered from R9-6-310 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-313 renumbered to R9-6-315; new R9-6-313 renumbered from R9-6-311 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-313 renumbered to R9-6-317; new Section R9-6-313 renumbered from R9-6-310 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-314. Campylobacteriosis**

Case control measures: A local health agency shall:

1. Exclude a campylobacteriosis case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
    - i. Diarrhea has resolved,
    - ii. A stool specimen negative for *Campylobacter* spp. is obtained from the campylobacteriosis case or suspect case, or
    - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
  - b. Using an aquatic venue until diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported campylobacteriosis case or suspect case; and
3. For each campylobacteriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-314 renumbered to R9-6-318; new R9-6-314 renumbered from R9-6-311 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-314 renumbered to R9-6-316; new R9-6-314 renumbered from R9-6-312 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-314 renumbered to R9-6-319; new Section R9-6-314 renumbered from R9-6-311 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-315. Carbapenem-resistant Enterobacteriaceae**

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
  - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
  - b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.
2. An administrator of a correctional facility, either personally or through a representative, shall:
  - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and

- b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
  3. A local health agency, in consultation with the Department, shall:
    - a. Ensure that a case or carrier of carbapenem-resistant enterobacteriaceae is isolated as necessary to prevent transmission; and
    - b. Upon request, ensure that an isolate or a specimen, as available, from each case or carrier of carbapenem-resistant enterobacteriaceae is submitted to the Arizona State Laboratory.
- B. Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae; and
  2. For each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae, submit to the Department the information required under R9-6-206(E).

**Historical Note**

Renumbered from R9-6-712 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-315 renumbered to R9-6-321; new R9-6-315 renumbered from R9-6-312 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-315 renumbered to R9-6-317; new R9-6-315 renumbered from R9-6-313 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-315 renumbered to R9-6-320; new Section R9-6-315 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-316. Chagas Infection and Related Disease (American Trypanosomiasis)**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Chagas infection or disease case or suspect case; and
2. For each Chagas infection or disease case:
  - a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - b. Provide to the Chagas infection or disease case or ensure that another person provides to the Chagas infection or disease case health education that includes:
    - i. The treatment options for Chagas infection or disease,
    - ii. Where the Chagas infection or disease case may receive treatment for Chagas infection or disease, and
    - iii. For women of childbearing age, the risks of transmission of Chagas infection or disease to a fetus.

**Historical Note**

Renumbered from R9-6-713 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-316 repealed; new R9-6-316 renumbered from R9-6-313 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-316 renumbered to R9-6-318; new R9-6-316 renumbered from R9-6-314 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-316 renumbered to R9-6-322; new Section R9-6-316 renumbered

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from R9-6-312 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-317. Chancroid (*Haemophilus ducreyi*)**

- A.** Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported chancroid case or suspect case;
  2. For each chancroid case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  3. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a chancroid case.
- B.** Contact control measures: When a chancroid case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

**Historical Note**

Renumbered from R9-6-714 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-317 renumbered to R9-6-323; new R9-6-317 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-317 renumbered to R9-6-319; new R9-6-317 renumbered from R9-6-315 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-317 renumbered to R9-6-323; new Section R9-6-317 renumbered from R9-6-313 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-318. Chikungunya**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a chikungunya case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Conduct an epidemiologic investigation of each reported chikungunya case or suspect case;
  3. For each chikungunya case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  4. Ensure that each chikungunya case is provided with health education that includes measures to:
    - a. Avoid mosquito bites, and
    - b. Reduce mosquito breeding sites.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each chikungunya case or suspect case and implement vector control measures as necessary.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Former R9-6-318 renumbered to R9-6-324; new R9-6-318 renumbered from R9-6-314 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-318 renumbered to R9-6-320; new R9-6-318 renumbered from R9-6-316 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-318 renumbered to R9-6-324; new Section R9-6-318 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-319. *Chlamydia trachomatis* Infection**

- A.** Case control measures: A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a *Chlamydia trachomatis* infection case that seeks treatment from the local health agency.
- B.** Contact control measures: If an individual who may have been exposed to chlamydia through sexual contact with a *Chlamydia trachomatis* infection case seeks treatment for symptoms of chlamydia infection from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

**Historical Note**

Renumbered from R9-6-715 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-319 renumbered to R9-6-326; new R9-6-319 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-319 renumbered to R9-6-321; new R9-6-319 renumbered from R9-6-317 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-319 renumbered to R9-6-325; new Section R9-6-319 renumbered from R9-6-314 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-320. Cholera**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a cholera case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Exclude a cholera case or suspect case from:
    - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until a stool specimen negative for toxigenic *Vibrio cholerae* is obtained from the cholera case or suspect case; and
    - b. Using an aquatic venue until diarrhea has resolved;
  3. Conduct an epidemiologic investigation of each reported cholera case or suspect case; and
  4. For each cholera case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Contact control measures: A local health agency shall provide follow-up for each cholera contact for five calendar days after exposure.

**Historical Note**

Renumbered from R9-6-716 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-320 renumbered to Section R9-6-321; new Section R9-6-320 adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-320 renumbered to R9-6-322; new R9-6-320 renumbered from R9-6-318 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-320 renumbered to R9-6-326; new Section R9-6-320 renumbered from R9-6-315 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-321. *Clostridium difficile***

- Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution transferring a known *Clostridium difficile* case with active infection and diarrhea to another

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health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known *Clostridium difficile* case.

2. If a known *Clostridium difficile* case with active infection and diarrhea is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known *Clostridium difficile* case.

**Historical Note**

Renumbered from R9-6-717 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-321 renumbered to R9-6-322; new Section R9-6-321 renumbered from R9-6-320 effective April 4, 1997 (Supp. 97-2). Former R9-6-321 renumbered to R9-6-322; new R9-6-321 renumbered from R9-6-315 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-321 renumbered to R9-6-323; new R9-6-321 renumbered from R9-6-319 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-321 renumbered to R9-6-327; new Section R9-6-321 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-322. Coccidioidomycosis (Valley Fever)**

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of coccidioidomycosis; and
2. For each outbreak of coccidioidomycosis, submit to the Department the information required under R9-6-206(E).

**Historical Note**

Renumbered from R9-6-718 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-322 renumbered to R9-6-323; new Section R9-6-322 renumbered from R9-6-321 effective April 4, 1997 (Supp. 97-2). Former R9-6-322 renumbered to R9-6-329; new R9-6-322 renumbered from R9-6-321 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-322 renumbered to R9-6-324; new R9-6-322 renumbered from R9-6-320 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-322 renumbered to R9-6-328; new Section R9-6-322 renumbered from R9-6-316 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-323. Colorado Tick Fever**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Colorado tick fever case or suspect case; and
2. For each Colorado tick fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-719 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-323 renumbered to R9-6-324; new Section R9-6-323 renumbered from R9-6-322 and amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-323 renumbered to R9-6-330; new R9-6-323

renumbered from R9-6-317 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-323 renumbered to R9-6-325; new R9-6-323 renumbered from R9-6-321 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-323 renumbered to R9-6-329; new Section R9-6-323 renumbered from R9-6-317 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-324. Conjunctivitis: Acute**

- A. Case control measures: An administrator of a school or child care establishment, either personally or through a representative, shall exclude an acute conjunctivitis case from attending the school or child care establishment until the symptoms of acute conjunctivitis subside or treatment for acute conjunctivitis is initiated and maintained for 24 hours.
- B. Outbreak control measures: A local health agency shall:
  1. Conduct an epidemiologic investigation of each reported conjunctivitis outbreak; and
  2. For each conjunctivitis outbreak, submit to the Department the information required under R9-6-206(E).

**Historical Note**

Renumbered from R9-6-720 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-324 renumbered to R9-6-326; new Section R9-6-324 renumbered from R9-6-323, effective April 4, 1997 (Supp. 97-2). Former R9-6-324 renumbered to R9-6-331; new R9-6-324 renumbered from R9-6-318 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-324 renumbered to R9-6-326; new R9-6-324 renumbered from R9-6-322 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-324 renumbered to R9-6-330; new Section R9-6-324 renumbered from R9-6-318 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-325. Creutzfeldt-Jakob Disease**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Creutzfeldt-Jakob disease case or suspect case; and
2. For each Creutzfeldt-Jakob disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-721 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-325 renumbered to R9-6-327; new Section R9-6-325 adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-325 renumbered to R9-6-333; new R9-6-325 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-325 renumbered to R9-6-327; new R9-6-325 renumbered from R9-6-323 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-325 renumbered to R9-6-331; new Section R9-6-325 renumbered from R9-6-319 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-326. Cryptosporidiosis**

A. Case control measures: A local health agency shall:

1. Exclude a cryptosporidiosis case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for chil-

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- dren in or attending a child care establishment until diarrhea has resolved; and
- b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported cryptosporidiosis case or suspect case; and
  3. For each cryptosporidiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

- B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of cryptosporidiosis.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Former Section R9-6-326 renumbered to R9-6-329; new Section R9-6-326 renumbered from R9-6-324 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-326 renumbered to R9-6-335; new R9-6-326 renumbered from R9-6-319 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-326 renumbered to R9-6-328; new R9-6-326 renumbered from R9-6-324 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-326 renumbered to R9-6-332; new Section R9-6-326 renumbered from R9-6-320 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-327. Cyclospora Infection**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported *Cyclospora* infection case or suspect case; and
2. For each *Cyclospora* infection case submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-722 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-327 renumbered to R9-6-330; new Section R9-6-327 renumbered from R9-6-325 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-327 renumbered to R9-6-336; new R9-6-327 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-327 renumbered to R9-6-329; new R9-6-327 renumbered from R9-6-325 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-327 renumbered to R9-6-333; new Section R9-6-327 renumbered from R9-6-321 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-328. Cysticercosis**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported cysticercosis case or suspect case; and
2. For each cysticercosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-701 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-328 renumbered to R9-6-331; new Section R9-6-328 adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-328 renumbered to R9-6-337; new R9-6-328 made by final

rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-328 renumbered to R9-6-330; new R9-6-328 renumbered from R9-6-326 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-328 renumbered to R9-6-334; new Section R9-6-328 renumbered from R9-6-322 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-329. Dengue**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a dengue case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported dengue case or suspect case;
3. For each dengue case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that each dengue case is provided with health education that includes measures to:
  - a. Avoid mosquito bites, and
  - b. Reduce mosquito breeding sites.

- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each dengue case or suspect case and implement vector control measures as necessary.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Section R9-6-329 renumbered to R9-6-332; new Section R9-6-329 renumbered from R9-6-326 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-329 repealed; new R9-6-329 renumbered from R9-6-322 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-329 renumbered to R9-6-331; new R9-6-329 renumbered from R9-6-327 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-329 renumbered to R9-6-335; new Section R9-6-329 renumbered from R9-6-323 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-330. Diarrhea, Nausea, or Vomiting**

**A.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of diarrhea, nausea, or vomiting;
2. Submit to the Department the information required under R9-6-206(E); and
3. Exclude each case that is part of an outbreak of diarrhea, nausea, or vomiting from:
  - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
    - i. Diarrhea and vomiting have resolved, or
    - ii. The local health agency has determined that the case is unlikely to infect other individuals; and
  - b. Using an aquatic venue for two weeks after diarrhea has resolved.

- B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of diarrhea, nausea, or vomiting.

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**Historical Note**

Renumbered from R9-6-723 and amended effective October 19, 1993 (Supp. 93-4). Section R9-6-330 renumbered to R9-6-333; new Section R9-6-330 renumbered from R9-6-327 effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-330 repealed; new R9-6-330 renumbered from R9-6-323 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-330 renumbered to R9-6-332; new R9-6-330 renumbered from R9-6-328 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3). New Section R9-6-330 renumbered from R9-6-324 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-331. Diphtheria****A. Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
  - a. Isolate and institute droplet precautions for a pharyngeal diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment; and
  - b. Isolate and institute contact precautions for a cutaneous diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from skin specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a diphtheria case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported diphtheria case or suspect case; and
  - c. For each diphtheria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B. Contact control measures: A local health agency shall:**

1. Exclude each diphtheria contact from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment until a set of cultures negative for *Corynebacterium diphtheriae* is obtained from the contact's nose and throat specimens;
2. In consultation with the Department, quarantine a contact of a diphtheria case, if indicated, until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the contact at least 24 hours apart;
3. Offer each previously immunized diphtheria contact prophylaxis and a vaccine containing diphtheria toxoid; and
4. Offer each unimmunized diphtheria contact prophylaxis and the primary vaccine series.

**Historical Note**

Renumbered from R9-6-724 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-331 renumbered to R9-6-334; new Section R9-6-331 renumbered from R9-6-328 effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-331 renumbered to R9-6-339; new R9-6-331 renumbered from R9-6-324 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-331 renumbered to R9-6-333; new R9-6-331 renumbered from R9-6-329 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-331 renumbered to R9-6-336; new Section R9-6-331 renumbered from R9-6-325 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-332. Ehrlichiosis****Case control measures: A local health agency shall:**

1. Conduct an epidemiologic investigation of each reported ehrlichiosis case or suspect case; and
2. For each ehrlichiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-725 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-332 renumbered to R9-6-335; new Section R9-6-332 renumbered from R9-6-329 effective April 4, 1997 (Supp. 97-2). Former R9-6-332 repealed; new R9-6-332 renumbered from R9-6-334 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-332 renumbered to R9-6-334; new R9-6-332 renumbered from R9-6-330 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-332 renumbered to R9-6-338; new Section R9-6-332 renumbered from R9-6-326 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-333. Emerging or Exotic Disease****A. Case control measures: A local health agency shall:**

1. Upon receiving a report under R9-6-202 of an emerging or exotic disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. In consultation with the Department, isolate an emerging or exotic disease case or suspect case as necessary to prevent transmission;
3. Conduct an epidemiologic investigation of each reported emerging or exotic disease case or suspect case; and
4. For each emerging or exotic disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine or exclude an emerging or exotic disease contact as necessary, according to R9-6-303, to prevent transmission.****Historical Note**

Renumbered from R9-6-726 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-333 renumbered to R9-6-336; new Section R9-6-333 renumbered from R9-6-330 effective April 4, 1997 (Supp. 97-2). Former R9-6-333 renumbered to R9-6-341; new R9-

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6-333 renumbered from R9-6-325 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-333 renumbered to R9-6-335; new R9-6-333 renumbered from R9-6-331 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-333 renumbered to R9-6-339; new Section R9-6-333 renumbered from R9-6-327 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-334. Encephalitis, Viral or Parasitic**

Case control measures: A local health agency shall:

1. Upon receiving a report of encephalitis under R9-6-202, notify the Department:
  - a. For a case or suspect case of parasitic encephalitis, within 24 hours after receiving the report and provide to the Department the information contained in the report; and
  - b. For a case or suspect case of viral encephalitis, within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported viral or parasitic encephalitis case or suspect case; and
3. For each encephalitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-727 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-334 renumbered to R9-6-337; new Section R9-6-334 renumbered from R9-6-331 effective April 4, 1997 (Supp. 97-2). Former R9-6-334 renumbered to R9-6-332; new R9-6-334 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-334 renumbered to R9-6-336; new R9-6-334 renumbered from R9-6-332 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-334 renumbered to R9-6-340; new Section R9-6-334 renumbered from R9-6-328 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-335. Escherichia coli, Shiga Toxin-producing**

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a Shiga toxin-producing *Escherichia coli* case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a Shiga toxin-producing *Escherichia coli* case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
    - i. Two successive stool specimens, collected from the Shiga toxin-producing *Escherichia coli* case or suspect case at least 24 hours apart, are negative for Shiga toxin-producing *Escherichia coli*;
    - ii. Diarrhea has resolved; or
    - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
  - b. Using an aquatic venue for two weeks after diarrhea has resolved;

3. Conduct an epidemiologic investigation of each reported Shiga toxin-producing *Escherichia coli* case or suspect case; and
4. For each Shiga toxin-producing *Escherichia coli* case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall:

1. If an animal located in a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak, provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*; and
2. If an animal located in a setting other than a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak:
  - a. Provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*, and
  - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about Shiga toxin-producing *Escherichia coli* and methods to reduce the risk of transmission.

**Historical Note**

Renumbered from R9-6-728 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-335 renumbered to R9-6-338; new Section R9-6-335 renumbered from R9-6-332 effective April 4, 1997 (Supp. 97-2). Former R9-6-335 renumbered to R9-6-342; new R9-6-335 renumbered from R9-6-326 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-335 renumbered to R9-6-337; new R9-6-335 renumbered from R9-6-333 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-335 renumbered to R9-6-341; new Section R9-6-335 renumbered from R9-6-329 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-336. Giardiasis**

Case control measures: A local health agency shall:

1. Exclude a giardiasis case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
    - i. Treatment for giardiasis is initiated and diarrhea has resolved, or
    - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
  - b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported giardiasis case or suspect case; and
3. For each giardiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-729 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-336 renumbered to R9-6-339; new Section R9-6-336 renumbered from R9-6-333 effective April 4, 1997 (Supp. 97-2). Former R9-6-336 renumbered to R9-6-343; new R9-6-336 renumbered from R9-6-327 and amended by final

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rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-336 renumbered to R9-6-338; new R9-6-336 renumbered from R9-6-334 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-336 renumbered to R9-6-342; new Section R9-6-336 renumbered from R9-6-331 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-337. Glanders**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a glanders case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported glanders case or suspect case;
3. For each glanders case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each glanders case or suspect case is submitted to the Arizona State Laboratory.

**Historical Note**

Renumbered from R9-6-730 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-337 renumbered to R9-6-340; new Section R9-6-337 renumbered from R9-6-334 effective April 4, 1997 (Supp. 97-2). Former R9-6-337 renumbered to R9-6-344; new R9-6-337 renumbered from R9-6-328 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-337 renumbered to R9-6-339; new R9-6-337 renumbered from R9-6-335 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-337 renumbered to R9-6-343; new Section R9-6-337 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-338. Gonorrhea**

A. Case control measures:

1. For the prevention of gonorrheal ophthalmia, a physician, physician assistant, registered nurse practitioner, or midwife attending the birth of an infant in this state shall treat the eyes of the infant immediately after the birth with one of the following, unless treatment is refused by the parent or guardian:
  - a. Erythromycin ophthalmic ointment 0.5%, or
  - b. Tetracycline ophthalmic ointment 1%.
2. A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a gonorrhea case that seeks treatment from the local health agency.

B. Contact control measures: If an individual who may have been exposed to gonorrhea through sexual contact with a gonorrhea case seeks treatment for symptoms of gonorrhea from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

**Historical Note**

Renumbered from R9-6-731 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-338 renumbered to R9-6-341; new Section R9-6-338 renumbered from R9-6-335 effective April 4, 1997 (Supp. 97-2). Former R9-6-338 renumbered to R9-6-346; new R9-6-338 made by final rulemaking at 10 A.A.R. 3559,

effective October 2, 2004 (Supp. 04-3). Former R9-6-338 renumbered to R9-6-340; new R9-6-338 renumbered from R9-6-336 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-338 renumbered to R9-6-344; new Section R9-6-338 renumbered from R9-6-332 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-339. *Haemophilus influenzae*: Invasive Disease**

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a *Haemophilus influenzae* meningitis or epiglottitis case or suspect case for 24 hours after the initiation of treatment.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 or R9-6-203 of a *Haemophilus influenzae* invasive disease case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported *Haemophilus influenzae* invasive disease case or suspect case; and
  - c. For each *Haemophilus influenzae* invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a *Haemophilus influenzae* invasive disease case and, if indicated, shall provide or arrange for each contact to receive immunization or treatment.

**Historical Note**

Renumbered from R9-6-732 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-339 renumbered to R9-6-342; new Section R9-6-339 renumbered from R9-6-336 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-339 renumbered to R9-6-347; new R9-6-339 renumbered from R9-6-331 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-339 renumbered to R9-6-341; new R9-6-339 renumbered from R9-6-337 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-339 renumbered to R9-6-345; new Section R9-6-339 renumbered from R9-6-333 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-340. Hansen's Disease (Leprosy)**

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Hansen's disease case or suspect case; and
2. For each Hansen's disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: In consultation with the Department, a local health agency shall examine contacts of a Hansen's disease case, if indicated, for signs and symptoms of leprosy at six-to-twelve month intervals for five years after the last exposure to an infectious case.

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**Historical Note**

Renumbered from R9-6-733 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-340 renumbered to R9-6-343; new Section R9-6-340 renumbered from R9-6-337 effective April 4, 1997 (Supp. 97-2). Former R9-6-340 renumbered to R9-6-348; new R9-6-340 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-340 renumbered to R9-6-343; new R9-6-340 renumbered from R9-6-338 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-340 renumbered to R9-6-346; new Section R9-6-340 renumbered from R9-6-334 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-341. Hantavirus Infection**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a hantavirus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Ensure that a hantavirus infection case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with hantavirus;
  3. Conduct an epidemiologic investigation of each reported hantavirus infection case or suspect case; and
  4. For each hantavirus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Environmental control measures: A local health agency shall conduct an environmental assessment for each hantavirus infection case or suspect case.

**Historical Note**

Renumbered from R9-6-734 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-341 renumbered to R9-6-344; new Section R9-6-341 renumbered from R9-6-338 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-341 renumbered to R9-6-349; new R9-6-341 renumbered from R9-6-333 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-341 renumbered to R9-6-344; new R9-6-341 renumbered from R9-6-339 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-341 renumbered to R9-6-347; new Section R9-6-341 renumbered from R9-6-335 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-342. Hemolytic Uremic Syndrome**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a hemolytic uremic syndrome case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Conduct an epidemiologic investigation of each reported hemolytic uremic syndrome case or suspect case; and
  3. For each hemolytic uremic syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Contact control measures: A local health agency shall exclude a hemolytic uremic syndrome contact with diarrhea of

unknown cause from working as a food handler until diarrhea has resolved.

**Historical Note**

Renumbered from R9-6-735 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-342 renumbered to R9-6-345; new Section R9-6-342 renumbered from R9-6-339 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-342 renumbered to R9-6-350; new R9-6-342 renumbered from R9-6-335 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-342 renumbered to R9-6-345; new R9-6-342 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-342 renumbered to R9-6-348; new Section R9-6-342 renumbered from R9-6-336 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-343. Hepatitis A**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 or R9-6-203 of a hepatitis A case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Exclude a hepatitis A case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
  3. Conduct an epidemiologic investigation of each reported hepatitis A case or suspect case; and
  4. For each hepatitis A case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Contact control measures: A local health agency shall:
1. Exclude a hepatitis A contact with symptoms of hepatitis A from working as a food handler during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
  2. For 45 calendar days after exposure, monitor a food handler who was a contact of a hepatitis A case during the infectious period for symptoms of hepatitis A; and
  3. Evaluate the level of risk of transmission from each contact's exposure to a hepatitis A case and, if indicated, provide or arrange for each contact to receive prophylaxis and immunization.

**Historical Note**

Renumbered from R9-6-736 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-343 renumbered to R9-6-346; new Section R9-4-343 renumbered from R9-6-340 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-343 renumbered to R9-6-351; new R9-6-343 renumbered from R9-6-336 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-343 renumbered to R9-6-346; new R9-6-343 renumbered from R9-6-340 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3). New Section R9-6-343 renumbered from R9-6-337 and amended by

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final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-344. Hepatitis B and Hepatitis D**

- A. Case control measures:**
1. A local health agency shall:
    - a. Evaluate a health care provider identified as the source of hepatitis B virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated;
    - b. Conduct an epidemiologic investigation of each reported case or suspect case of hepatitis B or hepatitis B co-infected with hepatitis D; and
    - c. For each acute case of hepatitis B or hepatitis B co-infected with hepatitis D or case of perinatal hepatitis B, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
  2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of hepatitis B, as required under A.R.S. § 32-1483 and 21 CFR 630.6.
- B. Contact control measures:** A local health agency shall:
1. Refer each non-immune hepatitis B contact to a health care provider for prophylaxis and initiation of the hepatitis B vaccine series, and
  2. Provide health education related to the progression of hepatitis B disease and the prevention of transmission of hepatitis B infection to each non-immune hepatitis B contact.

**Historical Note**

Renumbered from R9-6-737 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-344 renumbered to R9-6-347; new Section R9-6-344 renumbered from R9-6-341 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-344 renumbered to R9-6-352; new R9-6-344 renumbered from R9-6-337 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-344 renumbered to R9-6-347; new R9-6-344 renumbered from R9-6-341 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-344 renumbered to R9-6-349; new Section R9-6-344 renumbered from R9-6-338 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-345. Hepatitis C**

- Outbreak control measures:** A local health agency shall:
1. Conduct an epidemiologic investigation of each reported hepatitis C outbreak;
  2. For each hepatitis C outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(E);
  3. Evaluate a health care provider identified as the source of hepatitis C virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated; and
  4. Ensure that health education related to the progression of hepatitis C disease and the prevention of transmission of hepatitis C infection is provided to each individual who may have been exposed to hepatitis C during the outbreak.

**Historical Note**

Renumbered from R9-6-738 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-345 renumbered to R9-6-348; new Section R9-6-345 renumbered from R9-6-342 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-345 renumbered to R9-6-353; new R9-6-345 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-345 renumbered to R9-6-348; new R9-6-345 renumbered from R9-6-342 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-345 renumbered to R9-6-350; new Section R9-6-345 renumbered from R9-6-339 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-346. Hepatitis E**

- Case control measures:** A local health agency shall:
1. Exclude a hepatitis E case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
  2. Conduct an epidemiologic investigation of each reported hepatitis E case or suspect case; and
  3. For each hepatitis E case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-739 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-346 renumbered to R9-6-349; new Section R9-6-346 renumbered from R9-6-343 effective April 4, 1997 (Supp. 97-2). Former R9-6-346 renumbered to R9-6-354; new R9-6-346 renumbered from R9-6-338 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-346 renumbered to R9-6-349; new R9-6-346 renumbered from R9-6-343 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-346 renumbered to R9-6-351; new Section R9-6-346 renumbered from R9-6-340 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-347. HIV Infection and Related Disease**

- A. Case control measures:**
1. A local health agency shall:
    - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported HIV-infected individual or suspect case; and
    - b. For each HIV-infected individual, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
  2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of HIV infection, as required under A.R.S. § 32-1483 and 21 CFR 630.6.
  3. The Department and a local health agency shall offer anonymous HIV-testing to an individual as specified in R9-6-1005.
- B. Contact control measures:** The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection under A.R.S. § 36-664(I) as specified in R9-6-1006(A).
- C. Environmental control measures:** An employer, as defined under A.R.S. § 23-401, or health care provider shall comply

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with the requirements specified in A.R.S. § 23-403 and A.A.C. R20-5-602.

**Historical Note**

Renumbered from R9-6-740 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-347 renumbered to R9-6-350; new Section R9-6-347 renumbered from R9-6-344 effective April 4, 1997 (Supp. 97-2). Former R9-6-347 renumbered to R9-6-355; new R9-6-347 renumbered from R9-6-339 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-347 renumbered to R9-6-350; new R9-6-347 renumbered from R9-6-344 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-347 renumbered to R9-6-352; new Section R9-6-347 renumbered from R9-6-341 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-348. Influenza-Associated Mortality in a Child**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of an influenza-associated death of a child, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of influenza-associated mortality in a child; and
3. For each case of influenza-associated mortality in a child, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-741 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-348 renumbered to R9-6-351; new Section R9-6-348 renumbered from R9-6-345 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-348 renumbered to R9-6-356; new R9-6-348 renumbered from R9-6-340 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-348 renumbered to R9-6-352; new R9-6-348 renumbered from R9-6-345 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-348 renumbered to R9-6-353; new Section R9-6-348 renumbered from R9-6-342 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-349. Legionellosis (Legionnaires' Disease)**

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a legionellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported legionellosis case or suspect case; and
3. For each legionellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: The owner of a water, cooling, or ventilation system or equipment that is determined by the Department or a local health agency to be associated with a case of *Legionella* infection shall comply with the environmental control measures recommended by the Department or local health agency to prevent the exposure of other individuals.

**Historical Note**

Renumbered from R9-6-742 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-349 renumbered to R9-6-352; new Section R9-6-349 renumbered from R9-6-346 effective April 4, 1997 (Supp. 97-2). Former R9-6-349 renumbered to R9-6-357; new R9-6-349 renumbered from R9-6-341 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-349 renumbered to R9-6-353; new R9-6-349 renumbered from R9-6-346 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-349 renumbered to R9-6-354; new Section R9-6-349 renumbered from R9-6-344 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-350. Leptospirosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a leptospirosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported leptospirosis case or suspect case; and
3. For each leptospirosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-743 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-350 renumbered to R9-6-353; new Section R9-6-350 renumbered from R9-6-347 effective April 4, 1997 (Supp. 97-2). Former R9-6-350 renumbered to R9-6-358; new R9-6-350 renumbered from R9-6-342 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-350 renumbered to R9-6-355; new R9-6-350 renumbered from R9-6-347 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-350 renumbered to R9-6-355; new Section R9-6-350 renumbered from R9-6-345 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-351. Listeriosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a listeriosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported listeriosis case or suspect case;
3. For each listeriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each listeriosis case is submitted to the Arizona State Laboratory.

**Historical Note**

Renumbered from R9-6-744 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-351 renumbered to R9-6-354; new Section R9-6-351 renumbered from R9-6-348 effective April 4, 1997 (Supp. 97-2). Former R9-6-351 renumbered to R9-6-359; new R9-6-351 renumbered from R9-6-343 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-351 renumbered to R9-6-356;

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new R9-6-351 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-351 renumbered to R9-6-356; new Section R9-6-351 renumbered from R9-6-346 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-352. Lyme Disease**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Lyme disease case or suspect case; and
2. For each Lyme disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-745 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-352 renumbered to R9-6-355; new Section R9-6-352 renumbered from R9-6-349 effective April 4, 1997 (Supp. 97-2). Former R9-6-352 renumbered to R9-6-360; new R9-6-352 renumbered from R9-6-344 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-352 renumbered to R9-6-357; new R9-6-352 renumbered from R9-6-348 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-352 renumbered to R9-6-357; new Section R9-6-352 renumbered from R9-6-347 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-353. Lymphocytic Choriomeningitis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a lymphocytic choriomeningitis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported lymphocytic choriomeningitis case or suspect case; and
3. For each lymphocytic choriomeningitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Renumbered from R9-6-746 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-353 renumbered to R9-6-356; new Section R9-6-353 renumbered from R9-6-350 effective April 4, 1997 (Supp. 97-2). Former R9-6-353 renumbered to R9-6-361; new R9-6-353 renumbered from R9-6-345 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-353 renumbered to R9-6-358; new R9-6-353 renumbered from R9-6-349 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-353 renumbered to R9-6-359; new Section R9-6-353 renumbered from R9-6-348 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-354. Malaria**

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported malaria case or suspect case; and
2. For each malaria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each malaria case or suspect case and implement vector control measures as necessary.

**Historical Note**

Renumbered from R9-6-748 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-354 renumbered to R9-6-357; new Section R9-6-354 renumbered from R9-6-351 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-354 renumbered to R9-6-362; new R9-6-354 renumbered from R9-6-346 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-354 renumbered to R9-6-359; new R9-6-354 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-354 renumbered to R9-6-360; new Section R9-6-354 renumbered from R9-6-349 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-355. Measles (Rubeola)**

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
  - a. Exclude a measles case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the fourth calendar day after the rash appears; and
  - b. Exclude a measles suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until the local health agency has determined that the suspect case is unlikely to infect other individuals.
2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for a measles case from onset of illness through the fourth calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a measles:
  - a. Case from working at the health care institution from the onset of illness through the fourth calendar day after the rash appears; and
  - b. Suspect case from working at the health care institution until the local health agency has determined that the suspect case may return to work.
4. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 or R9-6-203 of a measles case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported measles case or suspect case;
  - c. For each measles case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that one or more specimens from each measles case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall com-

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ply with the measles control measures recommended by a local health agency or the Department.

**B. Contact control measures:**

1. When a measles case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
  - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
  - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall:
  - a. Determine which measles contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
  - b. Provide or arrange for immunization of each non-immune measles contact within 72 hours after last exposure, if possible.
3. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a measles case or suspect case unless the worker is able to provide evidence of immunity to measles through one of the following:
  - a. A record of immunization against measles with two doses of live virus vaccine given on or after the first birthday and at least one month apart;
  - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to measles; or
  - c. Documentary evidence of birth before January 1, 1957.

**Historical Note**

Renumbered from R9-6-749 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-355 renumbered to R9-6-358; new Section R9-6-355 renumbered from R9-6-352 effective April 4, 1997 (Supp. 97-2). Former R9-6-355 renumbered to R9-6-363; new R9-6-355 renumbered from R9-6-347 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-355 renumbered to R9-6-360; new R9-6-355 renumbered from R9-6-350 by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-355 renumbered to R9-6-362; new Section R9-6-355 renumbered from R9-6-350 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-356. Melioidosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a melioidosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported melioidosis case or suspect case;
3. For each melioidosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each melioidosis case or suspect case is submitted to the Arizona State Laboratory.

**Historical Note**

Former Section R9-6-115, Paragraph (38), renumbered and amended as R9-6-750 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-750 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-356 renumbered to R9-6-360; new Section R9-6-356 renumbered from R9-6-353 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-356 renumbered to R9-6-365; new R9-6-356 renumbered from R9-6-348 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-356 renumbered to R9-6-361; new R9-6-356 renumbered from R9-6-351 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-356 renumbered to R9-6-363; new Section R9-6-356 renumbered from R9-6-351 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-357. Meningococcal Invasive Disease****A. Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a meningococcal invasive disease case for 24 hours after the initiation of treatment.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 or R9-6-203 of a meningococcal invasive disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported meningococcal invasive disease case or suspect case;
  - c. For each meningococcal invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that an isolate or a specimen, as available, from each meningococcal invasive disease case is submitted to the Arizona State Laboratory.

**B. Contact control measures:** A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a meningococcal invasive disease case and, if indicated, provide or arrange for each contact to receive prophylaxis.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Former Section R9-6-357 renumbered to R9-6-361; new Section R9-6-357 renumbered from R9-6-354 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-357 repealed; new R9-6-357 renumbered from R9-6-349 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-357 renumbered to R9-6-362; new R9-6-357 renumbered from R9-6-352 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-357 renumbered to R9-6-364; new Section R9-6-357 renumbered from R9-6-352 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-358. Methicillin-resistant *Staphylococcus aureus* (MRSA)****A. Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution transferring a known methicillin-resistant *Staphylococcus aureus* case with active infection

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to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known methicillin-resistant *Staphylococcus aureus* case.

2. If a known methicillin-resistant *Staphylococcus aureus* case with active infection is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known methicillin-resistant *Staphylococcus aureus* case.

**B. Outbreak control measures:**

1. A local health agency, in consultation with the Department, shall:
  - a. Conduct an epidemiologic investigation of each reported outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility; and
  - b. For each outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
2. When an outbreak of methicillin-resistant *Staphylococcus aureus* occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency or the Department.

**Historical Note**

Former Section R9-6-115, Paragraph (39), renumbered and amended as R9-6-751 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-751 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-358 renumbered to R9-6-362; new Section R9-6-358 renumbered from R9-6-355 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-358 renumbered to R9-6-367; new R9-6-358 renumbered from R9-6-350 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-358 renumbered to R9-6-363; new R9-6-358 renumbered from R9-6-353 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-358 renumbered to R9-6-365; new Section R9-6-358 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-359. Mumps****A. Case control measures:**

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
  - a. Exclude a mumps case from the school or child care establishment for five calendar days after the onset of glandular swelling; and
  - b. Exclude a mumps suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions

with a mumps case for five calendar days after the onset of glandular swelling.

3. An administrator of a health care institution, either personally or through a representative, shall exclude a mumps:
  - a. Case from working at the health care institution for five calendar days after the onset of glandular swelling; and
  - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 or R9-6-203 of a mumps case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported mumps case or suspect case;
  - c. For each mumps case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that one or more specimens from each mumps case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the mumps control measures recommended by a local health agency or the Department.

**B. Contact control measures:**

1. When a mumps case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
  - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
  - b. Comply with the local health agency's recommendations for exclusion.
2. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a mumps case or suspect case unless the worker is able to provide evidence of immunity to mumps through one of the following:
  - a. A record of immunization against mumps with two doses of live virus vaccine given on or after the first birthday and at least one month apart; or
  - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to mumps.
3. A local health agency shall determine which mumps contacts will be:
  - a. Quarantined or excluded, according to R9-6-303, to prevent transmission; and
  - b. Advised to obtain an immunization against mumps.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-752 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-359 renumbered to R9-6-363; new Section R9-6-359 adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-359

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repealed; new R9-6-359 renumbered from R9-6-351 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-359 renumbered to R9-6-364; new R9-6-359 renumbered from R9-6-354 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-359 renumbered to R9-6-366; new Section R9-6-359 renumbered from R9-6-353 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-360. Norovirus**

- A.** Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported norovirus outbreak;
  2. Submit to the Department the information required under R9-6-206(E); and
  3. Exclude each case that is part of a norovirus outbreak from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
    - a. Diarrhea has resolved, or
    - b. The local health agency has determined that the case or suspect case is unlikely to infect other individuals.
- B.** Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with a norovirus outbreak.

**Historical Note**

Former Section R9-6-115, Paragraph (40), renumbered and amended as R9-6-753 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-753 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-360 renumbered to R9-6-364; new Section R9-6-360 renumbered from R9-6-356 and amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-360 renumbered to R9-6-368; new R9-6-360 renumbered from R9-6-352 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-360 renumbered to R9-6-365; new R9-6-360 renumbered from R9-6-355 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-360 renumbered to R9-6-367; new Section R9-6-360 renumbered from R9-6-354 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-361. Novel Coronavirus (e.g., SARS or MERS)**

- A.** Case control measures:
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel coronavirus case or suspect case, including a case or suspect case of severe acute respiratory syndrome or Middle East respiratory syndrome, until evaluated and determined to be non-infectious by a physician, physician assistant, or registered nurse practitioner.
  2. A local health agency shall:
    - a. Upon receiving a report under R9-6-202 of a novel coronavirus case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;

- b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a novel coronavirus case or suspect case to prevent transmission;
- c. Conduct an epidemiologic investigation of each reported novel coronavirus case or suspect case; and
- d. For each novel coronavirus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

- B.** Contact control measures: A local health agency, in consultation with the Department, shall determine which novel coronavirus contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

**Historical Note**

Former Section R9-6-115, Paragraph (41), renumbered and amended as R9-6-754 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-754 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-361 renumbered to R9-6-365; new Section R9-6-361 renumbered from R9-6-357 effective April 4, 1997 (Supp. 97-2). Former R9-6-361 renumbered to R9-6-369; new R9-6-361 renumbered from R9-6-353 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-361 renumbered to R9-6-366; new R9-6-361 renumbered from R9-6-356 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-361 renumbered to R9-6-368; new Section R9-6-361 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-362. Pediculosis (Lice Infestation)**

- A.** Case control measures:
1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a pediculosis case from the school or child care establishment until the case is treated with a pediculocide.
  2. An administrator of a shelter shall ensure that a pediculosis case is treated with a pediculocide and that the case's clothing and personal articles are disinfested.
- B.** Contact control measures: An administrator of a school or child care establishment that excludes a pediculosis case from the school or child care establishment, either personally or through a representative, shall ensure that a parent or guardian of a child who is a contact is notified that a pediculosis case was identified at the school or child care establishment.

**Historical Note**

Former Section R9-6-115, Paragraph (42), renumbered and amended as R9-6-755 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-755 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-362 renumbered to R9-6-366; new Section R9-6-362 renumbered from R9-6-358 effective April 4, 1997 (Supp. 97-2). Former R9-6-362 renumbered to R9-6-370; new R9-6-362 renumbered from R9-6-354 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-362 renumbered to R9-6-367; new R9-6-362 renumbered from R9-6-357 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-362 renumbered to R9-6-369; new Section R9-6-362 renumbered from R9-6-355 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-363. Pertussis (Whooping Cough)**

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- A. Case control measures:**
1. An administrator of a school or child care establishment, either personally or through a representative, shall:
    - a. Exclude a pertussis case from the school or child care establishment for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
    - b. Exclude a pertussis suspect case from the school or child care establishment until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
  2. An administrator of a health care institution, either personally or through a representative, shall:
    - a. Exclude a pertussis case from working at the health care institution for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
    - b. Exclude a pertussis suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
  3. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and initiate droplet precautions for a pertussis case for five calendar days after the date of initiation of antibiotic treatment for pertussis.
  4. A local health agency shall:
    - a. Upon receiving a report under R9-6-202 or R9-6-203 of a pertussis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
    - b. Conduct an epidemiologic investigation of each reported pertussis case or suspect case; and
    - c. For each pertussis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
  5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the pertussis control measures recommended by a local health agency or the Department.

- B. Contact control measures:**
1. When a pertussis case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
    - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
    - b. Comply with the local health agency's recommendations for exclusion.
  2. A local health agency shall identify contacts of a pertussis case and shall:
    - a. Determine which pertussis contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
    - b. If indicated, provide or arrange for a pertussis contact to receive antibiotic prophylaxis.

**Historical Note**

Former Section R9-6-115, Paragraph (43), renumbered and amended as R9-6-756 effective January 28, 1987

(Supp. 87-1). Renumbered from R9-6-756 and amended effective October 19, 1993 (Supp. 93-4). Section R9-6-363 renumbered to R9-6-367; new Section R9-6-363 renumbered from R9-6-359 effective April 4, 1997 (Supp. 97-2). Former R9-6-363 renumbered to R9-6-371; new R9-6-363 renumbered from R9-6-355 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-363 renumbered to R9-6-368; new R9-6-363 renumbered from R9-6-358 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3). New Section R9-6-363 renumbered from R9-6-356 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-364. Plague****A. Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a pneumonic plague case or suspect case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. An individual handling the body of a deceased plague case shall use droplet precautions.
3. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a plague case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported plague case or suspect case;
  - c. For each plague case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that an isolate or a specimen, as available, from each plague case or suspect case is submitted to the Arizona State Laboratory.

- B. Contact control measures:** A local health agency shall provide follow-up to pneumonic plague contacts for seven calendar days after last exposure to a pneumonic plague case.

**Historical Note**

Former Section R9-6-115, Paragraph (44), renumbered and amended as R9-6-757 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-757 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-364 renumbered to R9-6-368; new Section R9-6-364 renumbered from R9-6-360 effective April 4, 1997 (Supp. 97-2). Former R9-6-364 renumbered to R9-6-372; new R9-6-364 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-364 renumbered to R9-6-369; new R9-6-364 renumbered from R9-6-359 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-364 repealed; new Section R9-6-364 renumbered from R9-6-357 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-365. Poliomyelitis (Paralytic or Non-paralytic)****Case control measures:** A local health agency shall:

1. Upon receiving a report under R9-6-202 of a poliomyelitis case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;

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2. Conduct an epidemiologic investigation of each reported poliomyelitis case or suspect case;
3. For each poliomyelitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that one or more specimens from each poliomyelitis case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

**Historical Note**

Former Section R9-6-115, Paragraph (4), renumbered and amended as R9-6-758 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-758 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-365 renumbered to R9-6-372; new Section R9-6-365 renumbered from R9-6-361 effective April 4, 1997 (Supp. 97-2). Former R9-6-365 renumbered to R9-6-373; new R9-6-365 renumbered from R9-6-356 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-365 renumbered to R9-6-370; new R9-6-365 renumbered from R9-6-360 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-365 renumbered to R9-6-371; new Section R9-6-365 renumbered from R9-6-358 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-366. Psittacosis (Ornithosis)**

- A.** Case control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported psittacosis case or suspect case; and
  2. For each psittacosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Environmental control measures: A local health agency shall:
1. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a private residence:
    - a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis, and
    - b. Advise the bird's owner to obtain treatment for the bird; and
  2. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a setting other than a private residence:
    - a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis,
    - b. Ensure that the bird is treated or destroyed and any contaminated structures are disinfected, and
    - c. Require the bird's owner to isolate the bird from contact with members of the public and from other birds until treatment of the bird is completed or the bird is destroyed.

**Historical Note**

Former Section R9-6-115, Paragraph (46), renumbered and amended as R9-6-759 effective January 28, 1987 (Supp. 87-1). Renumbered from R9-6-759 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-366 renumbered to R9-6-374; new Section R9-6-366 renumbered from R9-6-362 effective April 4, 1997 (Supp. 97-2). Former R9-6-366 renumbered to R9-6-374; new R9-6-366 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-366 renumbered to R9-6-371; new R9-6-366 renumbered from R9-6-361 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

Section R9-6-366 renumbered to R9-6-372; new Section R9-6-366 renumbered from R9-6-359 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-367. Q Fever**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a Q fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported Q fever case or suspect case; and
3. For each Q fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Section R9-6-367 renumbered from R9-6-363 effective April 4, 1997 (Supp. 97-2). Former R9-6-367 renumbered to R9-6-375; new R9-6-367 renumbered from R9-6-358 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-367 renumbered to R9-6-372; new R9-6-367 renumbered from R9-6-362 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-367 renumbered to R9-6-373; new Section R9-6-367 renumbered from R9-6-360 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-368. Rabies in a Human**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a human rabies case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported human rabies case or suspect case;
3. For each human rabies case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that a specimen from each human rabies case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a human rabies case and, if indicated, provide or arrange for each contact to receive prophylaxis.

**Historical Note**

Section R9-6-368 renumbered from R9-6-364 effective April 4, 1997 (Supp. 97-2). Former R9-6-368 renumbered to R9-6-376; new R9-6-368 renumbered from R9-6-360 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-368 renumbered to R9-6-375; new R9-6-368 renumbered from R9-6-363 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-368 renumbered to R9-6-374; new Section R9-6-368 renumbered from R9-6-361 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-369. Relapsing Fever (Borreliosis)**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a borreliosis case or suspect case, notify the Department within one

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working day after receiving the report and provide to the Department the information contained in the report;

2. Conduct an epidemiologic investigation of each reported borreliosis case or suspect case; and
3. For each borreliosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-369 renumbered to R9-6-379; new R9-6-369 renumbered from R9-6-361 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-369 renumbered to R9-6-376; new R9-6-369 renumbered from R9-6-364 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-369 repealed; new Section R9-6-369 renumbered from R9-6-362 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-370. Respiratory Disease in a Health Care Institution or Correctional Facility**

Outbreak control measures:

1. A local health agency shall:
  - a. Conduct an epidemiologic investigation of each reported outbreak of respiratory disease in a health care institution or correctional facility; and
  - b. For each outbreak of respiratory disease in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
2. When an outbreak of respiratory disease occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency.

**Historical Note**

Adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-370 renumbered to R9-6-380; new R9-6-370 renumbered from R9-6-362 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-370 renumbered to R9-6-377; new R9-6-370 renumbered from R9-6-365 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-370 renumbered to R9-6-375; new Section R9-6-370 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-371. Rubella (German Measles)**

**A.** Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
  - a. Exclude a rubella case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the seventh calendar day after the rash appears; and
  - b. Exclude a rubella suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.

2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative and in consultation with the local health agency, shall isolate and institute droplet precautions for a rubella case through the seventh calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a rubella:
  - a. Case from working at the health care institution from the onset of illness through the seventh calendar day after the rash appears; and
  - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 or R9-6-203 of a rubella case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported rubella case or suspect case;
  - c. For each rubella case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that one or more specimens from each rubella case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the rubella control measures recommended by a local health agency or the Department.

**B.** Contact control measures:

1. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a rubella case or suspect case or of a patient who is or may be pregnant unless the worker first provides evidence of immunity to rubella consisting of:
  - a. A record of immunization against rubella given on or after the first birthday; or
  - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to rubella.
2. When a rubella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
  - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
  - b. Comply with the local health agency's recommendations for exclusion.
3. A local health agency shall:
  - a. Determine which rubella contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
  - b. Provide or arrange for immunization of each non-immune rubella contact within 72 hours after last exposure, if possible.

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**Historical Note**

Adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-371 renumbered to R9-6-381; new R9-6-371 renumbered from R9-6-363 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-371 renumbered to R9-6-378; new R9-6-371 renumbered from R9-6-366 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-371 renumbered to R9-6-376; new Section R9-6-371 renumbered from R9-6-365 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-372. Rubella Syndrome, Congenital****A. Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for an infant congenital rubella syndrome case until:
  - a. The infant congenital rubella syndrome case reaches one year of age; or
  - b. Two successive negative virus cultures, from specimens collected at least one month apart, are obtained from the infant congenital rubella syndrome case after the infant congenital rubella syndrome case reaches three months of age.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a congenital rubella syndrome case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported congenital rubella syndrome case or suspect case;
  - c. For each congenital rubella syndrome case, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that one or more specimens from each congenital rubella syndrome case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

- B. Contact control measures:** An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution who is known to be pregnant does not participate in the direct care of a congenital rubella syndrome case or suspect case unless the worker first provides evidence of immunity to rubella that complies with R9-6-371(B)(1).

**Historical Note**

Section R9-6-372 renumbered from R9-6-365 and amended effective April 4, 1997 (Supp. 97-2). Former R9-6-372 renumbered to R9-6-382; new R9-6-372 renumbered from R9-6-364 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-372 renumbered to R9-6-379; new R9-6-372 renumbered from R9-6-367 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-372 renumbered to R9-6-378; new Section R9-6-372 renumbered from R9-6-366 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-373. Salmonellosis****A. Case control measures:** A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a salmonellosis case or suspect case, notify the Department

within one working day after receiving the report and provide to the Department the information contained in the report;

2. Exclude a salmonellosis case or suspect case with diarrhea from:
    - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
      - i. Diarrhea has resolved,
      - ii. A stool specimen negative for *Salmonella* spp. is obtained from the salmonellosis case or suspect case, or
      - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
    - b. Using an aquatic venue until diarrhea has resolved;
  3. Conduct an epidemiologic investigation of each reported salmonellosis case or suspect case; and
  4. For each salmonellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures:** A local health agency shall:
1. If an animal infected with *Salmonella* spp. is located in a private residence, provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp.; and
  2. If an animal infected with *Salmonella* spp. is located in a setting other than a private residence:
    - a. Provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp., and
    - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about salmonellosis and methods to reduce the risk of transmission.

**Historical Note**

Adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-373 renumbered to R9-6-383; new R9-6-373 renumbered from R9-6-365 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-373 renumbered to R9-6-380; new R9-6-373 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-373 renumbered to R9-6-379; new Section R9-6-373 renumbered from R9-6-367 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-374. Scabies****A. Case control measures:**

1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a scabies case from the school or child care establishment until treatment for scabies is completed.
2. An administrator of a health care institution or shelter, either personally or through a representative, shall exclude a scabies case from participating in the direct care of a patient or resident until treatment for scabies is completed.
3. An administrator of a shelter, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
4. An administrator of a correctional facility, either personally or through a representative, shall ensure that a sca-

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bies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.

- B.** Contact control measures: An administrator of a school, child care establishment, health care institution, or shelter, either personally or through a representative, shall advise a scabies contact with symptoms of scabies to obtain examination and, if necessary, treatment.
- C.** Outbreak control measures: A local health agency shall:
1. Provide health education regarding prevention, control, and treatment of scabies to individuals affected by a scabies outbreak;
  2. When a scabies outbreak occurs in a health care institution, notify the licensing agency of the outbreak; and
  3. For each scabies outbreak, submit to the Department the information required under R9-6-202(D).

**Historical Note**

Section R9-6-374 renumbered from R9-6-366 effective April 4, 1997 (Supp. 97-2). Former R9-6-374 renumbered to R9-6-386; new R9-6-374 renumbered from R9-6-366 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-374 renumbered to R9-6-381; new R9-6-374 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-374 renumbered to R9-6-380; new Section R9-6-374 renumbered from R9-6-368 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-375. Shigellosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a shigellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a shigellosis case or suspect case with diarrhea from:
  - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
    - i. Diarrhea has resolved,
    - ii. A stool specimen negative for *Shigella* spp. is obtained from the shigellosis case or suspect case, or
    - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
  - b. Using an aquatic venue for one week after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported shigellosis case or suspect case; and
4. For each shigellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Adopted effective April 4, 1997 (Supp. 97-2). Former R9-6-375 renumbered to R9-6-387; new R9-6-375 renumbered from R9-6-367 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-375 renumbered to R9-6-382; new R9-6-375 renumbered from R9-6-368 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-375 renumbered to R9-6-381; new Section R9-6-375 renumbered from R9-6-370

and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-376. Smallpox**

**A.** Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a smallpox case or suspect case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a smallpox case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. In consultation with the Department:
    - i. Ensure that isolation and both airborne precautions and contact precautions have been instituted for a smallpox case or suspect case to prevent transmission, and
    - ii. Conduct an epidemiologic investigation of each reported smallpox case or suspect case;
  - c. For each smallpox case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that a specimen from each smallpox case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

**B.** Contact control measures: A local health agency, in consultation with the Department, shall:

1. Quarantine or exclude a smallpox contact as necessary, according to R9-6-303, to prevent transmission; and
2. Monitor the contact for smallpox symptoms, including fever, each day for 21 calendar days after last exposure.

**Historical Note**

Section renumbered from R9-6-368 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-376 renumbered to R9-6-383; new R9-6-376 renumbered from R9-6-369 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-376 renumbered to R9-6-382; new Section R9-6-376 renumbered from R9-6-371 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-377. Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)**

**A.** Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a spotted fever rickettsiosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Ensure that a spotted fever rickettsiosis case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with spotted fever rickettsiosis;
3. Conduct an epidemiologic investigation of each reported spotted fever rickettsiosis case or suspect case; and
4. For each spotted fever rickettsiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

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- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each spotted fever rickettsiosis case or suspect case and implement vector control measures as necessary.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-377 renumbered to R9-6-384; new R9-6-377 renumbered from R9-6-370 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-377 renumbered to R9-6-383; new Section R9-6-377 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-378. Streptococcal Group A Infection**

- A.** Streptococcal group A infection, invasive or non-invasive: Case control measures: An administrator of a school, child care establishment, or health care institution or a person in charge of a food establishment, either personally or through a representative, shall exclude a streptococcal group A infection case with streptococcal lesions or streptococcal sore throat from working as a food handler, attending or working in a school, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution for 24 hours after the initiation of treatment for streptococcal group A infection.
- B.** Invasive streptococcal group A infection: Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of streptococcal group A invasive infection;
  2. For each streptococcal group A invasive infection case involved in an outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  3. For each outbreak of streptococcal group A invasive infection, submit to the Department the information required under R9-6-206(E).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-378 renumbered to R9-6-385; new R9-6-378 renumbered from R9-6-371 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-378 renumbered to R9-6-384; new Section R9-6-378 renumbered from R9-6-372 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-379. Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age**

Case control measures: A local health agency shall:

1. Confirm the diagnosis of streptococcal group B invasive infection for each reported case or suspect case of streptococcal group B invasive infection in an infant younger than 90 days of age; and
2. For each case of streptococcal group B infection in an infant younger than 90 days of age, submit to the Department the information required under R9-6-202(C).

**Historical Note**

Section renumbered from R9-6-369 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Section repealed; new Section renumbered from R9-6-372 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Sec-

tion R9-6-379 renumbered to R9-6-385; new Section R9-6-379 renumbered from R9-6-373 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-380. Streptococcus pneumoniae Invasive Infection**

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of *Streptococcus pneumoniae* invasive infection; and
2. For each outbreak of *Streptococcus pneumoniae* invasive infection, submit to the Department the information required under R9-6-206(E).

**Historical Note**

Section renumbered from R9-6-370 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-380 renumbered to R9-6-386; new R9-6-380 renumbered from R9-6-373 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-380 renumbered to R9-6-386; new Section R9-6-380 renumbered from R9-6-374 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-381. Syphilis**

**A.** Case control measures:

1. A syphilis case shall obtain serologic testing for syphilis three months, six months, and one year after initiating treatment, unless more frequent or longer testing is recommended by a local health agency.
2. A health care provider for a pregnant syphilis case shall order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery.
3. A local health agency shall:
  - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported syphilis case or suspect case, confirming the stage of the disease;
  - b. For each syphilis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
  - c. If the syphilis case is pregnant, ensure that the syphilis case obtains the serologic testing for syphilis required in subsection (A)(1) and (A)(2); and
  - d. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a syphilis case.
4. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of syphilis, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

**B.** Contact control measures: When a syphilis case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

**C.** Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported syphilis outbreak; and
2. For each syphilis outbreak, submit to the Department the information required under R9-6-206(E).

**Historical Note**

Section renumbered from R9-6-371 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-381 renumbered to R9-6-387; new R9-6-381 renumbered from R9-6-374 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1,

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2008 (Supp. 08-2). Section R9-6-381 renumbered to R9-6-387; new Section R9-6-381 renumbered from R9-6-375 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-382. Taeniasis**

Case control measures: A local health agency shall:

1. Exclude a taeniasis case with *Taenia* spp. from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until free of infestation;
2. Conduct an epidemiologic investigation of each reported taeniasis case; and
3. For each taeniasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Section renumbered from R9-6-372 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-382 renumbered to R9-6-388; new R9-6-382 renumbered from R9-6-375 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-382 renumbered to R9-6-388; new Section R9-6-382 renumbered from R9-6-376 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-383. Tetanus**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported tetanus case or suspect case; and
2. For each tetanus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Section renumbered from R9-6-373 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-383 renumbered to R9-6-389; new R9-6-383 renumbered from R9-6-376 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-383 renumbered to R9-6-389; new Section R9-6-383 renumbered from R9-6-377 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-384. Toxic Shock Syndrome**

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported toxic shock syndrome case or suspect case; and
2. For each toxic shock syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-384 renumbered to R9-6-390; new R9-6-384 renumbered from R9-6-377 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3). New Section R9-6-384 renumbered from R9-6-378 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-385. Trichinosis**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a trichinosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported trichinosis case or suspect case; and
3. For each trichinosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-385 renumbered to R9-6-391; new R9-6-385 renumbered from R9-6-378 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-385 renumbered to R9-6-390; new Section R9-6-385 renumbered from R9-6-379 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-386. Tuberculosis**

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for:
  - a. An individual with infectious active tuberculosis until:
    - i. At least three successive sputum smears collected at least eight hours apart, at least one of which is taken first thing in the morning as soon as possible after the individual awakens from sleep, are negative for acid-fast bacilli;
    - ii. Anti-tuberculosis treatment is initiated with multiple antibiotics; and
    - iii. Clinical signs and symptoms of active tuberculosis are improved;
  - b. A suspect case of infectious active tuberculosis until:
    - i. At least two successive tests for tuberculosis, using a product and methodology approved by the U.S. Food and Drug Administration for use when making decisions whether to discontinue isolation and airborne precautions, for the suspect case are negative; or
    - ii. At least three successive sputum smears collected from the suspect case as specified in subsection (A)(1)(a)(i) are negative for acid-fast bacilli, anti-tuberculosis treatment of the suspect case is initiated with multiple antibiotics, and clinical signs and symptoms of active tuberculosis are improved; and
  - c. A case or suspect case of multi-drug resistant active tuberculosis until a tuberculosis control officer has approved the release of the case or suspect case.
2. An administrator of a health care institution, either personally or through a representative, shall notify a local health agency at least one working day before discharging a tuberculosis case or suspect case.
3. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a tuberculosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;

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- b. Exclude an individual with infectious active tuberculosis or a suspect case from working, unless the individual's work setting has been approved by a tuberculosis control officer, until the individual with infectious active tuberculosis or suspect case is released from airborne precautions according to the applicable criteria in subsection (A)(1);
- c. Conduct an epidemiologic investigation of each reported tuberculosis case, suspect case, or latent infection in a child five years of age or younger;
- d. For each tuberculosis case or suspect case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
- e. Ensure that an isolate or a specimen, as available, from each tuberculosis case is submitted to the Arizona State Laboratory; and
- f. Comply with the requirements specified in R9-6-1202.

**B. Contact control measures:**

1. A contact of an individual with infectious active tuberculosis shall allow a local health agency to evaluate the contact's tuberculosis status.
2. A local health agency shall comply with the tuberculosis contact control measures specified in R9-6-1202.

**C. An individual is not a tuberculosis case if the individual has a positive result from an approved test for tuberculosis but does not have clinical signs or symptoms of disease.****Historical Note**

Section renumbered from R9-6-374 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-386 renumbered to R9-6-392; new R9-6-386 renumbered from R9-6-380 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-386 renumbered to R9-6-391; new Section R9-6-386 renumbered from R9-6-380 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-387. Tularemia****Case control measures:**

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate a pneumonic tularemia case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. A local health agency shall:
  - a. Upon receiving a report under R9-6-202 of a tularemia case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  - b. Conduct an epidemiologic investigation of each reported tularemia case or suspect case;
  - c. For each tularemia case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
  - d. Ensure that an isolate or a specimen, as available, from each tularemia case or suspect case is submitted to the Arizona State Laboratory.

**Historical Note**

Section renumbered from R9-6-375 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-387 renumbered to R9-6-393; new R9-6-387 renumbered from R9-6-381 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-387 repealed; new Sec-

tion R9-6-387 renumbered from R9-6-381 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-388. Typhoid Fever****A. Case control measures: A local health agency shall:**

1. Upon receiving a report under R9-6-202 of a typhoid fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhoid fever case or suspect case;
3. For each typhoid fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
4. Exclude a typhoid fever case or suspect case from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
  - a. At least one month after the date of onset of illness; and
  - b. After two successive stool specimens, collected from the typhoid fever case at least 24 hours apart and at least 48 hours after cessation of antibiotic therapy, are negative for *Salmonella typhi*;
5. If a stool specimen from a typhoid fever case who has received antibiotic therapy is positive for *Salmonella typhi*, enforce the exclusions specified in subsection (A)(4) until two successive stool specimens, collected from the typhoid fever case at least one month apart and 12 or fewer months after the date of onset of illness, are negative for *Salmonella typhi*;
6. If a positive stool specimen, collected at least 12 months after onset of illness, is obtained from a typhoid fever case who has received antibiotic therapy, redesignate the case as a carrier; and
7. Exclude a typhoid fever carrier from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until three successive stool specimens, collected from the typhoid fever carrier at least one month apart, are negative for *Salmonella typhi*.

**B. Contact control measures: A local health agency shall exclude a typhoid fever contact from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until two successive stool specimens, collected from the typhoid fever contact at least 24 hours apart, are negative for *Salmonella typhi*.****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former R9-6-388 renumbered to R9-6-303; new R9-6-388 renumbered from R9-6-382 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-388 renumbered to R9-6-392; new Section R9-6-388 renumbered from R9-6-382 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-389. Typhus Fever****Case control measures: A local health agency shall:**

1. Upon receiving a report under R9-6-202 of a typhus fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;

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2. Conduct an epidemiologic investigation of each reported typhus fever case or suspect case; and
3. For each typhus fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

New Section recodified from R9-19-313 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Former R9-6-389 renumbered to R9-6-394; new R9-6-389 renumbered from R9-6-383 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-389 renumbered to R9-6-393; new Section R9-6-389 renumbered from R9-6-383 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-390. Vaccinia-related Adverse Event**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of a vaccinia-related adverse event, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of a vaccinia-related adverse event; and
3. For each case of a vaccinia-related adverse event, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Section R9-6-390 renumbered from R9-6-384 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-390 renumbered to R9-6-394; new Section R9-6-390 renumbered from R9-6-385 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-391. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus***

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*.
2. A diagnosing health care provider or an administrator of a health care institution transferring a known case with active infection or a known carrier of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* to another health care provider or health care institution shall, either personally or through a representative, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
  - a. Upon receiving a report under R9-6-202 of a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  - b. Ensure that a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is isolated as necessary to prevent transmission;
  - c. Conduct an epidemiologic investigation of each reported case or suspect case of vancomycin-resis-

tant or vancomycin-intermediate *Staphylococcus aureus*;

- d. For each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- e. Ensure that an isolate or a specimen, as available, from each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is submitted to the Arizona State Laboratory.

**Historical Note**

Section R9-6-391 renumbered from R9-6-385 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-391 renumbered to R9-6-395; new Section R9-6-391 renumbered from R9-6-386 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-392. Varicella (Chickenpox)**

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a varicella case from the school or child care establishment and from school- or child-care-establishment-sponsored events until lesions are dry and crusted.
2. An administrator of a health care institution, either personally or through a representative, shall isolate and implement airborne precautions for a varicella case until the case is no longer infectious.
3. A local health agency shall:
  - a. Conduct an epidemiologic investigation of each reported case of death due to primary varicella infection; and
  - b. For each reported case of death due to varicella infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures:

1. When a varicella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
  - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
  - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall determine which contacts of a varicella case will be:
  - a. Excluded from a school or child care establishment, and
  - b. Advised to obtain an immunization against varicella.

**Historical Note**

Section R9-6-392 renumbered from R9-6-386 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-392 renumbered to R9-6-396; new Section R9-6-392 renumbered from R9-6-388 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-393. *Vibrio* Infection**

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a *Vibrio* infection case or suspect case, notify the Department within one working day after receiving the report and provide to

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- the Department the information contained in the report;
2. Exclude a *Vibrio* infection case or suspect case with diarrhea from:
    - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
      - i. Diarrhea has resolved, or
      - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
    - b. Using an aquatic venue until diarrhea has resolved;
  3. Conduct an epidemiologic investigation of each reported *Vibrio* infection case or suspect case; and
  4. For each *Vibrio* infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

**Historical Note**

Section R9-6-393 renumbered from R9-6-387 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section R9-6-393 renumbered to R9-6-397; new Section R9-6-393 renumbered from R9-6-389 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-394. Viral Hemorrhagic Fever**

- A. Case control measures:
  1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement both droplet precautions and contact precautions for a viral hemorrhagic fever case or suspect case for the duration of the illness.
  2. A local health agency shall:
    - a. Upon receiving a report under R9-6-202 of a viral hemorrhagic fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
    - b. Conduct an epidemiologic investigation of each reported viral hemorrhagic fever case or suspect case;
    - c. For each viral hemorrhagic fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
    - d. Ensure that one or more specimens from each viral hemorrhagic fever case or suspect case are submitted to the Arizona State Laboratory.
- B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine a viral hemorrhagic fever contact as necessary to prevent transmission.

**Historical Note**

Section R9-6-394 renumbered from R9-6-389 by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3). New Section R9-6-394 renumbered from R9-6-390 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-395. West Nile Virus Infection**

- A. Case control measures: A local health agency shall:
  1. Conduct an epidemiologic investigation of each reported West Nile virus infection case or suspect case;
  2. For each case of West Nile virus infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

3. Ensure that each West Nile virus infection case is provided with health education that includes measures to:
  - a. Avoid mosquito bites, and
  - b. Reduce mosquito breeding sites.
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each West Nile virus infection case or suspect case and implement vector control measures as necessary.

**Historical Note**

New Section R9-6-395 renumbered from R9-6-391 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-396. Yellow Fever**

- A. Case control measures: A local health agency shall:
  1. Upon receiving a report under R9-6-202 of a yellow fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
  2. Conduct an epidemiologic investigation of each reported yellow fever case or suspect case;
  3. For each yellow fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
  4. Ensure that each yellow fever case is provided with health education that includes measures to:
    - a. Avoid mosquito bites, and
    - b. Reduce mosquito breeding sites; and
  5. Ensure that an isolate or a specimen, as available, from each yellow fever case or suspect case is submitted to the Arizona State Laboratory.
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each yellow fever case or suspect case and implement vector control measures as necessary.

**Historical Note**

New Section R9-6-396 renumbered from R9-6-392 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-397. Yersiniosis (Enteropathogenic *Yersinia*)**

- Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a yersiniosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Exclude a yersiniosis case or suspect case with diarrhea from:
    - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
      - i. Diarrhea has resolved,
      - ii. A stool specimen negative for enteropathogenic *Yersinia* is obtained from the case or suspect case, or
      - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
    - b. Using an aquatic venue for two weeks after diarrhea has resolved;
  3. Conduct an epidemiologic investigation of each reported yersiniosis case or suspect case;

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4. For each yersiniosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
5. Ensure that an isolate or a specimen, as available, from each yersiniosis case is submitted to the Arizona State Laboratory.

**Historical Note**

New Section R9-6-397 renumbered from R9-6-393 and amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-398. Zika Virus Infection**

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a Zika virus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
  2. Conduct an epidemiologic investigation of each reported Zika virus infection case or suspect case;
  3. For each Zika virus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
  4. Ensure that one or more specimens from each Zika virus infection case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory; and
  5. Provide to the Zika virus infection case or ensure that another person provides to the Zika virus infection case health education that includes measures to:
    - a. Avoid mosquito bites,
    - b. Reduce mosquito breeding sites, and
    - c. Reduce the risk of sexual or congenital transmission of Zika virus.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each Zika virus infection case or suspect case and implement vector control measures as necessary.

**Historical Note**

New Section R9-6-398 made by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**Exhibit III-A. Repealed****Historical Note**

Exhibit III-A made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-A repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-B. Repealed****Historical Note**

Exhibit III-B made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-B repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-C. Repealed****Historical Note**

Exhibit III-C made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-C repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-D. Repealed****Historical Note**

Exhibit III-D made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-D repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-E. Repealed****Historical Note**

Exhibit III-E made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-E repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-F. Repealed****Historical Note**

Exhibit III-F made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-F repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-G. Repealed****Historical Note**

Exhibit III-G made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-G repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-H. Repealed****Historical Note**

Exhibit III-H made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-H repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-I. Repealed****Historical Note**

Exhibit III-I made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-I repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-J. Repealed****Historical Note**

Exhibit III-J made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-J repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-K. Repealed****Historical Note**

Exhibit III-K made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-K repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-L. Repealed****Historical Note**

Exhibit III-L made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-L repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-M. Repealed**

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**Historical Note**

Exhibit III-M made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-M repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit III-N. Repealed****Historical Note**

Exhibit III-N made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-N repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)****R9-6-401. Definitions**

In this Article, unless otherwise specified:

1. "ADAP" means the AIDS Drug Assistance Program.
2. "Adult" means an individual who is:
  - a. Eighteen or more years old;
  - b. Married; or
  - c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. "Advocacy" means the act of supporting, recommending, or arguing in favor of a cause or course of action for the benefit of an individual or group of individuals.
4. "AHCCCS" means the Arizona Health Care Cost Containment System.
5. "Annual family income" means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.
6. "Applicant" means an individual for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
7. "Applying for a low-income subsidy" means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
8. "Biological substance" means a compound made by or derived from a plant or animal source.
9. "Business day" means any day of the week other than a Saturday, Sunday, legal holiday, or day on which the Department is authorized or obligated by law or executive order to close.
10. "Calendar day" means any day of the week, including a Saturday, Sunday, or legal holiday.
11. "Case management services" means the activities performed by a case manager for an HIV-infected individual or the individuals in the HIV-infected individual's family unit.
12. "Case manager" means an individual who:
  - a. Assesses the needs of an HIV-infected individual for health services, housing, support services, and financial assistance;
  - b. Assists the HIV-infected individual with obtaining health services, housing, support services, or financial assistance, as applicable;
  - c. Coordinates the interaction of the HIV-infected individual with service providers; and
  - d. Monitors the interaction of the HIV-infected individual with service providers to:
    - i. Determine the effects of each service provider's activities on the needs of the HIV-infected individual, and
    - ii. Develop strategies to reduce unmet needs.
13. "CD4-T-lymphocyte count" means the number of a specific type of white blood cell in a cubic millimeter of blood.
14. "Community service organization" means a nonprofit entity that assists an individual who is infected with HIV or affected by another individual's infection with HIV by providing the services listed below or coordinating the interaction of the individual with service providers to obtain or retain:
  - a. Rehabilitation services,
  - b. Case management services,
  - c. Support services,
  - d. Advocacy,
  - e. Financial assistance, or
  - f. Housing.
15. "Confirmatory test" means a laboratory analysis, such as a Western blot analysis, approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
16. "Current" means within the six months before the:
  - a. Date of application, or
  - b. Date on which an enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.
17. "Date of application" means the month, day, and year that an individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP.
18. "Diagnosis" means an identification of a communicable disease by an individual authorized by law to make the identification.
19. "Drug" means a chemical or biological substance determined by the U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection and available only through a prescription order.
20. "Earned income" means monetary payments received by an individual as a result of work performed or rental of property owned or leased by the individual, including:
  - a. Wages,
  - b. Commissions and fees,
  - c. Salaries and tips,
  - d. Profit from self-employment,
  - e. Profit from rent received from a tenant or boarder, and
  - f. Any other monetary payments received by an individual for work performed or rental of property.
21. "Employed" means working for a person for money in the form of wages or a salary.
22. "Enrolling in a Medicare drug plan" means submitting information to the Centers for Medicare and Medicaid Services during an initial enrollment period or general enrollment period and selecting a Medicare drug plan.
23. "Family unit" means:
  - a. A group of individuals residing together who are related by birth, marriage, or adoption; or
  - b. An individual who:
    - i. Does not reside with another individual; or
    - ii. Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.
24. "Formulary" means a list of drugs that are available to an individual through the individual's health insurance or ADAP.
25. "General enrollment period" means the interval of time between November 15 and December 31 of each calendar year during which an individual:

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- a. May enroll in a Medicare drug plan if the individual, before May 15, 2006:
- i. Was enrolled in Medicare,
  - ii. Was eligible to enroll in a Medicare drug plan, and
  - iii. Did not enroll in a Medicare drug plan; or
- b. Currently enrolled in a Medicare drug plan may select a different Medicare drug plan.
26. "Gift" means something given voluntarily by an individual to another individual without payment in return.
27. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction.
28. "Health-related services" means the same as in A.R.S. § 36-401.
29. "Health services" means medical services, nursing services, or health-related services provided to an individual.
30. "HIV infection" means the same as in A.R.S. § 36-661.
31. "Homeless" means having a primary nighttime sleeping place that is not:
- a. Designed to be a sleeping place for human beings, or
  - b. Ordinarily used as a primary nighttime sleeping place for human beings.
32. "Initial enrollment period" means the interval of time during which an individual may first enroll in a Medicare drug plan.
33. "Job" means a position in which an individual is employed.
34. "Low-income subsidy" means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual's spouse.
35. "Medical services" means the same as in A.R.S. § 36-401.
36. "Medicare" means a federal health insurance program established under Title XVIII of the Social Security Act.
37. "Medicare drug plan" means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
38. "Non-permanent housing" means a living situation in which an individual is:
- a. Homeless, or
  - b. Living in a shelter or other temporary living arrangement.
39. "Nonprofit" means owned and operated under the direction of an entity that is recognized as exempt under § 501 of the U.S. Internal Revenue Code.
40. "Nursing services" means the same as in A.R.S. § 36-401.
41. "Physician" means an individual licensed as a doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.
42. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25.
43. "Poverty level" means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services.
44. "Prescription order" means the same as in A.R.S. § 32-1901.
45. "Primary care provider" means the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV infection.
46. "Provisional enrollment" means an interval of time, determined by the Department, during which an individual who meets the eligibility criteria specified in R9-6-403(1) through (4) may receive drugs on the ADAP formulary through the vendor pharmacy while the individual is waiting for:
- a. An eligibility determination for AHCCCS enrollment or a low-income subsidy; or
  - b. Enrollment in a Medicare drug plan.
47. "Public assistance" means a government program that provides a monetary payment, or that supplies goods or services that have a monetary value, to individuals, based on need, such as Supplemental Security Income, Temporary Aid to Needy Families, Food Stamps, or non-federally funded General Assistance.
48. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15.
49. "Regular" means recurring at fixed intervals.
50. "Rehabilitation services" means the same as in A.A.C. R9-10-201.
51. "Representative" means the:
- a. Guardian of an individual;
  - b. Parent of an individual who is not an adult; or
  - c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
52. "Reservist" means a member of the Reserves of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.
53. "Resident" means an individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist.
54. "Restricted drug" means a drug on the ADAP formulary that is approved by the Department on a case-by-case basis for enrolled individuals who meet medical indications for the use of the drug.
55. "Routine training" means military education and related hands-on activities designed to make an individual ready for the tasks the individual would be expected to perform as a member of the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy.
56. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is HIV infected.
57. "Self-employed" means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
58. "Service provider" means an individual who provides medical services, nursing services, health-related services, or support services for an HIV-infected individual.
59. "Shelter" means a facility that provides individuals with a temporary place to sleep at night with the expectation that the individual will go elsewhere during the daylight hours.
60. "Support services" means activities, not related to the treatment of HIV infection, intended to maintain or improve the physical, mental, or psychosocial capabilities of an HIV-infected individual or the individual's family unit and that may include:
- a. Providing opportunities for social interactions for HIV-infected individuals;
  - b. Taking care of a child of an HIV-infected individual while the HIV-infected individual receives medical services;
  - c. Providing food or meals to an HIV-infected individual in the HIV-infected individual's residence; or

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- d. Providing information about available support services or materials about how to reduce the risk of spreading HIV.
61. "Temporary" means transient, with no expectation of permanence.
62. "Third-party payor" means a person other than an HIV-infected individual, such as health insurance or an employer, that is responsible for paying a portion of the costs of drugs for the HIV-infected individual.
63. "Tourist" means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.
64. "Treatment" means the administration to an individual of health services intended to relieve illness or injury.
65. "Unearned income" means monetary payments received by an individual that are not compensation for work performed or rental of property owned or leased by the individual, including:
- Unemployment insurance;
  - Workers' compensation;
  - Disability payments;
  - Payments from the Social Security Administration;
  - Payments from public assistance;
  - Periodic insurance or annuity payments;
  - Retirement or pension payments;
  - Strike benefits from union funds;
  - Training stipends;
  - Child support payments;
  - Alimony payments;
  - Military family allotments;
  - Regular support payments from a relative or other individual not residing in the household;
  - Investment income;
  - Royalty payments;
  - Periodic payments from estates or trusts; and
  - Any other monetary payments received by an individual that are not:
    - As a result of work performed or rental of property owned by the individual,
    - Gifts,
    - Lump-sum capital gains payments,
    - Lump-sum inheritance payments,
    - Lump-sum insurance payments, or
    - Payments made to compensate for personal injury.
66. "Vendor pharmacy" means an entity that contracts with the Department to perform the activities specified in R9-6-409(C).
67. "Veteran" means an individual who has served in the United States Armed Forces.
68. "Viral load test" means a laboratory analysis to determine the amount of HIV circulating in the body of an individual.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989. Amended as an emergency effective June 26, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Emergency amendment readopted without change effective October 17, 1989 (Supp. 89-4). Amended effective September 19, 1990 (Supp. 90-3). Renumbered from R9-6-801 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-401 renumbered to R9-6-402; new Section R9-6-401 made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-402. Limitations and Termination of Program**

ADAP ceases to provide drugs when available funding is exhausted or terminated. ADAP is not an entitlement program and does not create a right to assistance absent available funding.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Renumbered from R9-6-802 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-402 renumbered to R9-6-403; new Section R9-6-402 renumbered from R9-6-401 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

**R9-6-403. Eligibility Requirements**

An individual is eligible to enroll in ADAP if the individual:

- Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;
- Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(9);
- Has an annual family income that is less than or equal to 300% of the poverty level;
- Satisfies one of the following:
  - Has no health insurance coverage;
  - Has health insurance coverage that:
    - Does not cover drugs, or
    - Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
  - Is an American Indian or Alaska Native who:
    - Is eligible for, but chooses not to use, the Indian Health Service to receive drugs; and
    - Either has no other health insurance coverage or has health insurance coverage that:

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- (1) Does not cover drugs, or
  - (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary; or
  - d. Is a veteran who:
    - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
    - ii. Either has no other health insurance coverage or has health insurance coverage that:
      - (1) Does not cover drugs, or
      - (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
  5. Is ineligible for enrollment in AHCCCS, as established by documentation issued by AHCCCS; and
  6. If eligible for Medicare:
    - a. Is ineligible for a full low-income subsidy, as established by documentation issued by the Social Security Administration; and
    - b. Has enrolled in a Medicare drug plan.
- Historical Note**
- Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Renumbered from R9-6-803 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-403 renumbered to R9-6-404; new Section R9-6-403 renumbered from R9-6-402 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).
- R9-6-404. Initial Application Process**
- A.** An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following documents:
1. A Department-provided form, completed by the applicant or the applicant's representative containing:
    - a. The applicant's name, date of birth, and gender;
    - b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
    - c. If the applicant is in non-permanent housing, the address of a community service organization that has agreed to receive written communications for the applicant;
    - d. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
    - e. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant;
    - f. The number of individuals in the applicant's family unit and the names and ages of the individuals;
    - g. The names of individuals, other than the persons specified in subsection (A)(1)(q)(iii), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
    - h. The applicant's annual family income;
    - i. The applicant's race and ethnicity;
    - j. Whether the applicant or an adult in the applicant's family unit:
      - i. Is employed;
      - ii. Is self-employed;
      - iii. Is receiving public assistance;
      - iv. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iii) and, if so, an identification of the source of the monetary payments; or
      - v. Is using a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iv) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;
    - k. Whether the applicant is receiving benefits from AHCCCS;
    - l. The date the applicant or the applicant's representative is scheduled to meet with AHCCCS to discuss eligibility for AHCCCS, if applicable;
    - m. Whether the applicant is eligible for Medicare benefits and, if not, the date on which the applicant will be eligible for Medicare benefits;
    - n. If the applicant is eligible for Medicare benefits, whether:
      - i. The applicant or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and
      - ii. Either:
        - (1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or
        - (2) The applicant is enrolled in a Medicare drug plan;
    - o. Whether the applicant has health insurance other than Medicare that would pay for drugs on the ADAP formulary;
    - p. Whether the applicant has served on active duty:
      - i. In the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy;
      - ii. In the Army National Guard or Air National Guard; or
      - iii. As a reservist serving on active duty other than for routine training purposes;
    - q. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:

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- i. Understands that the applicant or the applicant's representative is required to submit to the Department proof of ineligibility for enrollment in AHCCCS and for a low-income subsidy within 30 calendar days after the date of application, if not provided to the Department with the application;
  - ii. Understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan, if the applicant is eligible for Medicare, within 30 calendar days after the date of application, if not provided to the Department with the application;
  - iii. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:
    - (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
    - (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
    - (3) The applicant's primary care provider or designee;
    - (4) The vendor pharmacy, to assist with drug distribution; and
    - (5) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant;
  - iv. Understands that the applicant or the applicant's representative is required to submit to the Department proof of annual family income as part of the application; and
  - v. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);
  - r. A statement by the applicant or the applicant's representative attesting that:
    - i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information provided to the Department as specified in subsection (A), including the information in the documents accompanying the form specified in subsection (A)(1), is accurate and complete;
    - ii. The applicant meets the eligibility criteria specified in R9-6-403; and
    - iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and
  - s. The dated signature of the applicant or the applicant's representative;
2. The Department-provided form specified in subsection (B), completed by the applicant's primary care provider;
  3. A written prescription order signed by the applicant's primary care provider or a copy of the written prescription order for each drug on the list specified in subsection (B)(5);
  4. A copy of current documentation from AHCCCS stating that the applicant's eligibility for enrollment in AHCCCS has not yet been determined or that AHCCCS is denying eligibility to the applicant;
  5. If the applicant is eligible for Medicare, a copy of current documentation from the Social Security Administration stating that the applicant's eligibility for a low-income subsidy has not yet been determined or that the applicant is ineligible for a full low-income subsidy;
  6. If the applicant is eligible for Medicare, a copy of the applicant's Medicare prescription card or copy of a letter from the company providing the applicant's Medicare drug plan, confirming that the applicant has applied for or is enrolled in a Medicare drug plan;
  7. Proof of annual family income, including the following items as applicable to the applicant's family unit:
    - a. For each job held by an adult in the family unit:
      - i. Paycheck stubs from the 30 calendar days before the date of application, or
      - ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
    - b. From each self-employed adult in the family unit, documentation of the current net income from self-employment, such as:
      - i. An income tax return submitted for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
      - ii. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the family unit;
      - iii. A profit and loss statement for the self-employed adult's business; or
      - iv. Bank statements from the self-employed adult's checking and savings accounts;
    - c. A letter from each entity providing public assistance to an adult in the family unit, describing payments from public assistance;
    - d. A letter from an entity providing a monetary award to an adult in the family unit to cover educational expenses other than tuition, describing the monetary award; and
    - e. Documentation showing the amount and source of any regular monetary payments received by an adult in the family unit from sources other than those specified in subsection (A)(7)(a) through subsection (A)(7)(d);
  8. If the applicant or the applicant's representative has stated on the form specified in subsection (A)(1) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(7), a Department-provided form, completed and signed within 30 calendar days before the date of application, containing:
    - a. Information completed by the applicant or the applicant's representative stating whether:
      - i. An adult in the applicant's family unit receives money from intermittent work performed by the adult in the family unit for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
      - ii. The applicant is homeless or living in a shelter;
      - iii. The applicant is receiving assistance from another individual; and
      - iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;

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- b. A statement by the applicant or the applicant's representative attesting that to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(8)(a) is accurate and complete;
  - c. The dated signature of the applicant or the applicant's representative;
  - d. A statement by the applicant's case manager or primary care provider attesting that to the best of the knowledge and belief of the applicant's case manager or primary care provider the information submitted under subsection (A)(8)(a) is accurate and complete; and
  - e. The dated signature of the applicant's case manager or primary care provider;
9. Proof that the applicant is a resident of Arizona that includes:
- a. One of the following that shows the Arizona residential address included on the Department-provided form specified in subsection (A)(1) and the name of the applicant or an adult in the applicant's family unit:
    - i. Documentation issued by a governmental entity related to participation in public assistance, dated within 60 calendar days before the date of application;
    - ii. Current documentation from AHCCCS related to the applicant's eligibility for enrollment in AHCCCS;
    - iii. Current documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;
    - iv. Current documentation from the Arizona Department of Economic Security related to the applicant's eligibility for unemployment insurance benefits;
    - v. A property tax statement for the most recent tax year issued by a governmental entity;
    - vi. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
    - vii. A current lease agreement; or
    - viii. A mortgage statement for the most recent tax year;
  - b. If the applicant is unable to produce documentation that satisfies subsection (A)(9)(a), two of the following that show the Arizona residential address included on the Department-provided form specified in subsection (A)(1) and the name of the applicant or an adult in the applicant's family unit:
    - i. A utility bill dated within 60 calendar days before the date of application;
    - ii. A tax statement, other than a property tax statement, issued by a governmental entity for the most recent tax year;
    - iii. An Internal Revenue Service Form W-2 for the most recent tax year;
    - iv. A check stub or statement of direct deposit issued by an employer for the most recent pay period;
    - v. A bank or credit union statement dated within 60 calendar days before the date of application;
    - vi. A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division;
    - vii. A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division;
    - viii. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division;
    - ix. A tribal enrollment card or other type of tribal identification; or
    - x. A current immigration identification card issued by U.S. Citizenship and Immigration Services; or
  - c. If the applicant is unable to produce documentation that satisfies either subsection (A)(9)(a) or (b), two of the following that include the name of the applicant or an adult in the applicant's family unit:
    - i. A document listed in subsection (A)(9)(b)(i) through subsection (A)(9)(b)(x) that includes the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
    - ii. A letter issued by an entity providing non-permanent housing to the applicant, including the Arizona residential address of the non-permanent housing that is the same as the Arizona residential address for the applicant shown on the Department-provided form specified in subsection (A)(1);
    - iii. A written statement issued by a community service organization, verifying that the applicant is homeless and a resident of Arizona;
    - iv. A credit card, primary care provider's office, insurance company, or mobile telephone company billing statement dated within 60 calendar days before the date of application, including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
    - v. A current vehicle insurance card, including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
    - vi. An official document, such as an Arizona voter registration card, issued by a governmental entity and including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
    - vii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address shown on the Department-provided form specified in subsection (A)(1) within 30 calendar days before the date of application; or
    - viii. A written statement issued by the applicant's primary care provider, verifying that the applicant is a resident of Arizona; and
10. If the applicant or the applicant's representative has stated on the Department-provided form specified in subsection (A)(8) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.
- B.** The primary care provider of an applicant for initial enrollment in ADAP shall complete for the applicant a Department-provided form containing:
- 1. The applicant's name;

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2. The primary care provider's name, business address, telephone number, fax number, and professional license number;
  3. A statement that the applicant has been diagnosed with HIV infection;
  4. The dates of and results for the most recent confirmatory test, CD4-T-lymphocyte count, and, if available, viral load test conducted for the applicant;
  5. A list of each drug from the current ADAP formulary prescribed for the applicant by the primary care provider;
  6. A statement by the primary care provider that the primary care provider understands that the primary care provider is required to notify the Department of changes specified in R9-6-406(B);
  7. A statement by the primary care provider attesting that, to the best of the primary care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and
  8. The dated signature of the primary care provider.
- C. For purposes of enrollment in ADAP, an applicant or the applicant's representative may report annual family income using actual family income for the most recent 12 months or estimated annual family income determined by multiplying the most recent monthly family income by 12.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (A) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2).

Renumbered from R9-6-804 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-404 renumbered to R9-6-405; new Section R9-6-404 renumbered from R9-6-403 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-405. Enrollment Process; Provisional Enrollment**

- A. The Department shall:
1. Review the documents submitted by an applicant as required in R9-6-404(A);
  2. Determine whether the applicant is eligible under R9-6-403;
  3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
  4. Notify the applicant or the applicant's representative of the Department's decision within five business days after receiving the documents specified in R9-6-404(A).
- B. An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.
- C. The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:
1. The applicant or the applicant's representative fails to provide documentation establishing eligibility for enrollment in ADAP,

2. The documentation submitted to the Department under R9-6-404 is found to contain false information, or
  3. The Department does not have funds available to enroll the applicant in ADAP.
- D. The Department shall grant a 30-day provisional enrollment in ADAP to an applicant if:
1. The Department determines that the applicant meets the requirements of R9-6-403(1) through (4); and
  2. The applicant or the applicant's representative attests in writing that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and a Medicare drug plan, but is unable to provide documentation that complies with R9-6-403(5) or (6) or both.
- E. The Department shall provide an applicant to whom the Department has granted provisional enrollment in ADAP with the drugs on the list specified in R9-6-404(B)(5) during the provisional enrollment period.
- F. Except as specified in subsection (H), to continue ADAP enrollment beyond a 30-day provisional enrollment period, an applicant or the applicant's representative shall provide to the Department, before the end of the 30-day provisional enrollment period, documentation that complies with R9-6-403(5) and, if applicable, R9-6-403(6).
- G. Except as specified in subsection (H), if an applicant with provisional enrollment or the applicant's representative fails to provide documentation as required in subsection (F) to the Department before end of a 30-day provisional enrollment period, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03.
- H. The Department may grant an extension of provisional enrollment to an applicant beyond a 30-day provisional enrollment period if the applicant or the applicant's representative provides documentation to the Department that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and Medicare drug plan and:
1. AHCCCS has not yet determined whether the applicant is eligible for AHCCCS enrollment; or
  2. If the applicant is eligible for Medicare:
    - a. The Social Security Administration has not yet determined whether the applicant is eligible for a low-income subsidy, or
    - b. The applicant cannot enroll in a Medicare drug plan until the next general enrollment period.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted as an emergency and subsection (B), Paragraph (2) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2).

Renumbered from R9-6-805 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-405 renumbered to R9-6-406; new Section R9-6-405 renumbered from R9-6-404 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

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Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-406. Notification Requirements**

- A.** An enrolled individual or the enrolled individual's representative shall notify the Department in writing or by telephone and comply with the applicable requirements specified in R9-6-407 within 30 calendar days after any of the following occurs:
1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
  2. The enrolled individual adds or deletes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in R9-6-404(A)(1)(g);
  3. The enrolled individual begins receiving treatment for HIV infection from a primary care provider different from the primary care provider who completed:
    - a. The form specified in R9-6-404(B), or
    - b. The most recent form specified in R9-6-407(D);
  4. The enrolled individual has:
    - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
    - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
    - c. Been determined eligible for a low-income subsidy;
  5. The enrolled individual's annual family income has:
    - a. Increased to an amount above 300% of the poverty level, or
    - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS; or
  6. The enrolled individual establishes residency outside Arizona.
- B.** An enrolled individual's primary care provider shall:
1. Notify the Department in writing or by telephone:
    - a. That the enrolled individual has died, within 14 calendar days after the primary care provider learns of the death; and
    - b. That the enrolled individual is receiving treatment for HIV infection from a different primary care provider, within 14 calendar days after the primary care provider learns of the change in primary care provider; and
  2. Include in the notification:
    - a. The name and date of birth of the enrolled individual;
    - b. If notifying under subsection (B)(1)(a), the date of death; and
    - c. If notifying under subsection (B)(1)(b), the name, business address, and telephone number of the new primary care provider.
- C.** An enrolled individual's primary care provider shall notify the vendor pharmacy, as specified in R9-6-409(A):
1. When prescribing a new drug for the enrolled individual, or
  2. Within seven calendar days after discontinuing a drug that was contained in the list completed by the enrolled individual's primary care provider under R9-6-404(B) or R9-6-407(D).
- D.** An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:
1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;

2. The enrolled individual has begun receiving treatment for HIV infection from a primary care provider who is different from the primary care provider who completed:
  - a. The form specified in R9-6-404(B), or
  - b. The most recent form specified in R9-6-407(D);
3. The enrolled individual has:
  - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
  - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
  - c. Been determined eligible for a low-income subsidy;
4. The enrolled individual's annual family income has:
  - a. Increased to an amount above 300% of the poverty level; or
  - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS;
5. The enrolled individual has established residency outside Arizona; or
6. The enrolled individual has died.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Renumbered from R9-6-806 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-406 renumbered to R9-6-407; new Section R9-6-406 renumbered from R9-6-405 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-406 renumbered to R9-6-407; new R9-6-406 made by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-407. Continuing Enrollment**

- A.** To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:
1. When the enrolled individual's residential or mailing address changes, comply with subsection (B);
  2. When the enrolled individual's primary care provider changes, comply with subsection (C);
  3. When the enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, comply with subsection (E);
  4. When the enrolled individual becomes eligible for Medicare, comply with subsection (F);
  5. Before the expiration of each six-month period after an individual's initial enrollment, comply with subsection (G); and
  6. Before the expiration of each 24-month period after an individual's initial enrollment, comply with subsection (H).
- B.** When an enrolled individual's residential or mailing address changes, the enrolled individual or the enrolled individual's representative shall:

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1. Complete a Department-provided form containing for the enrolled individual the information specified in R9-6-404(A)(1)(a) through R9-6-404(A)(1)(h) and R9-6-404(A)(1)(j), (k), (m), (n), and (o);
  2. Attest on the form specified in subsection (B)(1) that:
    - a. To the best of the knowledge and belief of the enrolled individual or the enrolled individual's representative, the information submitted in the form and the documents submitted with the form are accurate and complete;
    - b. The enrolled individual meets the eligibility criteria specified in R9-6-403; and
    - c. The enrolled individual or the enrolled individual's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and that an individual's enrollment in ADAP may be terminated as specified in R9-6-408;
  3. Grant permission on the form specified in subsection (B)(1) for the Department to discuss the enrolled individual's enrollment with:
    - a. AHCCCS, for the purpose of determining AHCCCS eligibility;
    - b. Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
    - c. The applicant's primary care provider or designee;
    - d. The vendor pharmacy, to assist with drug distribution; and
    - e. Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution;
  4. Sign and date the form specified in subsection (B)(1); and
  5. Submit to the Department within 30 calendar days of the change:
    - a. The form specified in subsection (B)(1); and
    - b. Proof of Arizona residency, as specified in R9-6-404(A)(9), showing the new Arizona residential address included on the form specified in subsection (B)(1).
- C.** When an enrolled individual's primary care provider changes, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
  2. Obtain from the new primary care provider the Department-provided form specified in subsection (D), completed by the new primary care provider; and
  3. Submit the form specified in subsection (B)(1) and the form specified in subsection (C)(2) to the Department within 30 calendar days after the change.
- D.** The primary care provider of an enrolled individual shall complete for the enrolled individual a Department-provided form containing:
1. The information required under R9-6-404(B)(1), (2), and (5) through (8); and
  2. The dates of and results for the most recent CD4-T-lymphocyte count and, if available, viral load test conducted for the enrolled individual.
- E.** When an enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, the enrolled individual or the enrolled individual's representative shall:
1. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual family income; and
  2. If the enrolled individual is determined to be ineligible for AHCCCS enrollment, submit to the Department within 30 calendar days after the change, documentation that complies with R9-6-403(5).
- F.** When an enrolled individual becomes eligible for Medicare, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare:
1. Apply for a low-income subsidy and for a Medicare drug plan, and
  2. If the enrolled individual is determined to be ineligible for a low-income subsidy, submit to the Department documentation that complies with R9-6-403(6).
- G.** Before the expiration of each six-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall submit to the Department:
1. Proof of annual family income, as specified in R9-6-404(A)(7) or (8); and
  2. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).
- H.** Before the expiration of each 24-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
  2. Obtain from the enrolled individual's primary care provider the Department-provided form completed as specified in subsection (D); and
  3. Submit to the Department:
    - a. The form specified in subsection (H)(1),
    - b. The form specified in subsection (H)(2),
    - c. Proof of annual family income, as specified in R9-6-404(A)(7) or (8), and
    - d. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).
- I.** The Department shall:
1. Review information about an enrolled individual and determine eligibility for continuing enrollment for the enrolled individual:
    - a. Every six months after the individual's initial enrollment;
    - b. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A); or
    - c. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;
  2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:
    - a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
    - b. The Department determines that:
      - i. The information in the documents submitted to the Department is accurate and complete, and
      - ii. The enrolled individual is eligible under R9-6-403; and
  3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five business days after receipt of the documents required in subsection (A).
- J.** If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days

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(Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Emergency not renewed. Former Section R9-6-808 renumbered as Section R9-6-807, amended, and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (C) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered from R9-6-807 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-407 repealed; new Section R9-6-407 renumbered from R9-6-406 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-407 renumbered to R9-6-409; new R9-6-407 renumbered from R9-6-406 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-408. Termination from ADAP Services**

- A.** The Department may terminate an individual's enrollment in ADAP if:
1. The Department learns that information submitted to the Department by the individual or the individual's representative under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) is inaccurate or incomplete;
  2. The vendor pharmacy does not receive a request from the individual or the individual's representative for any refill of a drug for a period of 90 calendar days; or
  3. The individual or the individual's representative exhibits violent or threatening behavior to an employee of the Department or the vendor pharmacy, as established by documentation such as a police report or a written document from the individual.
- B.** The Department may terminate approval of a restricted drug for an individual enrolled in ADAP if the Department learns that the enrolled individual:
1. Is not following the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; or
  2. Has not had additional laboratory analyses performed, as required in R9-6-409(E)(1)(i)(ii), to support continuing use of the restricted drug.
- C.** The Department shall send to an individual or the individual's representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:
1. The individual's enrollment in ADAP, or
  2. Approval of a restricted drug for the individual.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Former Section R9-6-809 renumbered as Section R9-6-808, amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered from R9-6-808

effective October 19, 1993 (Supp. 93-4). Former Section R9-6-408 renumbered to R9-6-409; new Section R9-6-408 made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-409. Drug Prescription and Distribution Requirements**

- A.** A primary care provider shall:
1. Issue a prescription order:
    - a. For each drug from the ADAP formulary prescribed for an applicant or enrolled individual by the primary care provider;
    - b. For dispensing up to a 30-day supply of the drug; and
    - c. To authorize no more than a six-month supply of the drug, including the original prescription order and all refills;
  2. Submit:
    - a. A written prescription order or copy of a written prescription order to the Department as specified in R9-6-404(A)(3); and
    - b. A written or oral prescription order to the vendor pharmacy when:
      - i. Prescribing a drug for a newly enrolled individual,
      - ii. Prescribing a new drug for an enrolled individual, or
      - iii. Authorizing an additional six-month supply of a drug for an enrolled individual; and
  3. Notify the vendor pharmacy when discontinuing a drug for an enrolled individual.
- B.** The Department shall forward a written prescription order submitted to the Department as specified in subsection (A)(2)(a) to the vendor pharmacy within three business days of approving an individual for initial enrollment.
- C.** The vendor pharmacy shall:
1. Maintain a supply of the drugs on the ADAP formulary available for dispensing;
  2. Receive prescription orders issued by an enrolled individual's primary care provider;
  3. Before dispensing drugs, verify:
    - a. With an enrolled individual or the enrolled individual's representative the address to which the enrolled individual or the enrolled individual's representative wants the drugs delivered, and
    - b. An individual's enrollment status;
  4. Dispense up to a 30-day supply of a drug to an enrolled individual:
    - a. Upon receipt of a:
      - i. Prescription order as specified in subsection (C)(2), or
      - ii. Request from the enrolled individual or the enrolled individual's representative for a refill of the drug;
    - b. To the address identified, as specified in subsection (C)(3)(a); and
    - c. So the drug is dispensed to the enrolled individual no later than three business days after the vendor pharmacy:
      - i. Receives a prescription order or request for refill, as specified in subsection (C)(4)(a);
      - ii. Has verified the address to which the drug is to be delivered, as specified in subsection (C)(3)(a); and

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- iii. Has verified the individual's enrollment status, as specified in subsection (C)(3)(b); and
5. Notify the Department upon receiving a request for dispensing a drug for an individual who is neither enrolled nor provisionally enrolled in ADAP.
- D.** The Department may authorize replacement of a drug when:
1. The drug has been dispensed by the vendor pharmacy to an enrolled individual, and
  2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.
- E.** The primary care provider of an enrolled individual may request approval of a restricted drug for the enrolled individual by:
1. Completing a Department-provided form for each requested restricted drug that contains the following information:
    - a. The name, business address, and telephone number of the primary care provider;
    - b. The date of the request;
    - c. The enrolled individual's name and date of birth;
    - d. The indications for the use of the restricted drug;
    - e. The most recent results of laboratory analyses to support the request and the dates of the laboratory analyses;
    - f. A justification for use of the restricted drug by the enrolled individual;
    - g. An attestation by the primary care provider that:
      - i. To the best of the primary care provider's knowledge and belief, the information presented in the request is accurate and complete; and
      - ii. The primary care provider understands that the primary care provider is required to provide instructions to the enrolled individual regarding the use of the restricted drug and monitor the enrolled individual's use of the restricted drug;
    - h. The dated signature of the primary care provider;
    - i. An attestation by the enrolled individual or the enrolled individual's representative that the enrolled individual or the enrolled individual's representative understands that the enrolled individual is required to:
      - i. Follow the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; and
      - ii. Have periodic laboratory analyses performed to support continuing use of the restricted drug; and
    - j. The dated signature of the enrolled individual or the enrolled individual's representative;
  2. Issuing a written or oral prescription order for the restricted drug to the vendor pharmacy; and
  3. Submitting to the Department:
    - a. The completed drug-specific form specified in subsection (E)(1), and
    - b. Copies of the results of the most recent laboratory analyses to support the request for the restricted drug.
- F.** If the restricted drug requested under subsection (E) is approved by the Department for an enrolled individual, the enrolled individual's primary care provider shall:
1. Provide instructions to the enrolled individual regarding the use of the restricted drug; and
  2. Monitor the enrolled individual's use of and clinical response to the restricted drug.
- G.** When the Department receives a drug-specific form requesting a restricted drug for an enrolled individual, the Department shall:
1. Review the documents submitted according to subsection (E)(3);
  2. Determine whether the information submitted to the Department:
    - a. Is complete; and
    - b. Substantiates that the enrolled individual's use of the restricted drug is indicated; and
  3. Notify the following of the Department's decision within five business days after receiving the request:
    - a. The enrolled individual or the enrolled individual's representative;
    - b. The enrolled individual's primary care provider; and
    - c. The vendor pharmacy.
- H.** If the Department denies a request for approval of a restricted drug for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.
- I.** The Department shall only authorize the distribution of drugs that are included on the ADAP formulary.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former Section R9-6-409 renumbered to R9-6-902; new Section R9-6-409 renumbered from R9-6-408 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-409 renumbered to R9-6-410; new R9-6-409 renumbered from R9-6-407 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**Exhibit A. Renumbered****Historical Note**

Exhibit A "Consent for HIV Testing" (English) form adopted effective April 4, 1997 (Supp. 97-2). Exhibit A renumbered to Article 9 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

**Exhibit B. Renumbered****Historical Note**

Exhibit B "Consentimiento Para la Prueba de VIH" (Consent for HIV Testing-Spanish) form adopted effective April 4, 1997 (Supp. 97-2). Exhibit B renumbered to Article 9 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

**R9-6-410. Confidentiality**

In administering ADAP, the Department shall comply with all applicable federal and state laws relating to confidentiality of information.

**Historical Note**

Adopted effective October 19, 1993 (Supp. 93-4). Section renumbered to R9-6-903 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-410 renumbered from R9-6-409 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

**R9-6-411. Repealed**

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**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-412. Repealed****Historical Note**

Correction, adding Historical Note: Amended effective February 25, 1976 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-413. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Amended effective June 4, 1980 (Supp. 80-3). Amended effective January 28, 1987 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-414. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-415. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-416. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-417. Repealed****Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-418. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-419. Repealed****Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-420. Reserved****R9-6-421. Reserved****R9-6-422. Reserved****R9-6-423. Reserved****R9-6-424. Reserved****R9-6-425. Reserved****R9-6-426. Reserved****R9-6-427. Reserved****R9-6-428. Reserved****R9-6-429. Reserved****R9-6-430. Reserved****R9-6-431. Repealed****Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-432. Repealed****Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).  
Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-433. Repealed****Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

**ARTICLE 5. RABIES CONTROL****R9-6-501. Definitions**

In this Article, unless otherwise specified:

1. "Animal control agency" means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that has the responsibility for controlling rabies in animals in a particular geographic area.
2. "Approved rabies vaccine" means a rabies vaccine authorized for use in this state by the state veterinarian under A.A.C. R3-2-409.
3. "Cat" means an animal of the genus species *Felis domesticus*.
4. "Currently vaccinated" means that an animal was last immunized against rabies with an approved rabies vaccine:
  - a. At least 28 days and no longer than one year before being exposed, if the animal has only received an initial dose of approved rabies vaccine;
  - b. No longer than one year before being exposed, if the approved rabies vaccine is approved for annual use under A.A.C. R3-2-409; or
  - c. No longer than three years before being exposed, if the approved rabies vaccine is approved for triennial use under A.A.C. R3-2-409.
5. "Dog" means an animal of the genus species *Canis familiaris*.
6. "Euthanize" means to kill an animal painlessly.
7. "Exposed" means bitten by or having touched a rabid animal or an animal suspected of being rabid.
8. "Ferret" means an animal of the genus species *Mustela putorius*.
9. "Not currently vaccinated" means that an animal does not meet the definition of "currently vaccinated."
10. "Rabid" means infected with rabies virus, a rhabdovirus of the genus *Lyssavirus*.
11. "Suspect case" means an animal whose signs or symptoms indicate that the animal may be rabid.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5).  
Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Corrections, subsections (A), (B) and (C) (Supp. 77-5). Amended effective April 10, 1980 (Supp. 80-2). Former Section R9-6-116 renumbered without change as R9-6-501 effective January 28, 1987 (Supp. 87-1). Section R9-6-501 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-501 renumbered to R9-6-701, new Section R9-6-501 renumbered from R9-6-201 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-501 renumbered to R9-6-502; new R9-6-501 renumbered from R9-

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6-105 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

**R9-6-502. Management of Exposed Animals**

- A. An animal control agency shall manage an exposed dog, cat, or ferret as follows:
1. If the exposed dog, cat, or ferret is currently vaccinated, the animal control agency shall:
    - a. Revaccinate the animal with an approved rabies vaccine within seven days after the date that the animal is exposed; and
    - b. Confine and observe the animal in the owner's home or, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, for 45 days after the animal is exposed; or
  2. If the exposed dog, cat, or ferret is not currently vaccinated, the animal control agency shall:
    - a. Euthanize the animal; or
    - b. At the owner's request, confine the animal for 180 days, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, and vaccinate the animal with an approved rabies vaccine 28 days before it is released from confinement.
- B. An animal control agency that is aware of an exposed animal, other than a cat, dog, ferret, or livestock, shall:
1. Make every effort to capture the exposed animal as soon as it is identified, and
  2. Euthanize the animal as soon as it is captured.
- C. An animal control agency shall release from confinement a dog, cat, or ferret exposed to a suspect case when the animal control agency receives a negative rabies report on the suspect case from the Department.
- D. Livestock shall be handled according to A.A.C. R3-2-408.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5).  
Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-117 amended as a permanent rule by adding a new subsection (C) and repealing the former subsections (C), (D) and (E) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-117 renumbered without change as R9-6-502 effective January 28, 1987 (Supp. 87-1). Section R9-6-502 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-502 renumbered to R9-6-702, new Section R9-6-502 renumbered from R9-6-202 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-502 renumbered to R9-6-503; new R9-6-502 renumbered from R9-6-501 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

**R9-6-503. Suspect Cases**

- A. An animal control agency shall ensure confinement of a dog, cat, or ferret that is a suspect case until:
1. The animal dies,
  2. The animal is euthanized, or
  3. A veterinarian determines that the animal is not rabid.
- B. When an animal control agency euthanizes a suspect case, the animal control agency shall avoid damaging the brain, so that rabies testing can be performed.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5).  
Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-118 amended as a permanent rule by repealing subsection (C) and renumbering subsections (D) through (I) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-118 renumbered without change as R9-6-503 effective January 28, 1987 (Supp. 87-1). Section R9-6-503 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-503 renumbered from R9-6-703, new Section R9-6-503 renumbered from R9-6-203 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-503 renumbered to R9-6-504; new R9-6-503 renumbered from R9-6-502 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

**R9-6-504. Animal Control Agency Reporting Requirements**

By April 30 of each year, an animal control agency shall submit a report to the Department that contains the number of animal bites to humans reported as occurring in the animal control agency's jurisdiction during the preceding calendar year and a breakdown of the bites by:

1. Species of animal,
2. Age of victim, and
3. Month of occurrence.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5).  
Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-119 amended as a permanent rule by repealing subsections (A) and (B), renumbering and amending subsections (C) through (I) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-119 renumbered without change as R9-6-504 effective January 28, 1987 (Supp. 87-1). Section R9-6-504 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-504 renumbered to R9-6-704 effective October 19, 1993 (Supp. 93-4). Section renumbered from R9-6-503 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

**R9-6-505. Renumbered****Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-505 renumbered to R9-6-705 effective October 19, 1993 (Supp. 93-4).

**R9-6-506. Renumbered****Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506 renumbered to R9-6-706 effective October 19, 1993 (Supp. 93-4).

**Table 1. Renumbered**

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**Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506, Table 1 renumbered to R9-6-706 Table 1 effective October 19, 1993 (Supp. 93-4).

**Table 2. Renumbered****Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506, Table 2 renumbered to R9-6-706, Table 2 effective October 19, 1993 (Supp. 93-4).

**ARTICLE 6. REPORTING POST-EXPOSURE RABIES PROPHYLAXIS****R9-6-601. Reporting Requirements**

A physician or an authorized designee shall submit a written or electronic report to the Department for each individual exposed who receive post-exposure rabies prophylaxis that includes:

1. Name, age, address, and telephone number of the individual exposed;
2. Date of report;
3. Reporting institution or physician;
4. Date of exposure;
5. Body part exposed;
6. Type of exposure: Bite or saliva contact (non-bite);
7. Species of animal;
8. Animal disposition: quarantined, euthanized, died, unable to locate;
9. Animal rabies test results, if any: positive or negative;
10. Treatment regimen; and
11. Date treatment was initiated.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-601 renumbered to R9-6-201, new Section R9-6-601 adopted effective October 19, 1993 (Supp. 93-4). Section renumbered from R9-6-106 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former Section R9-6-601 renumbered to R9-6-1201; new Section R9-6-601 made by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Section amended by final expedited rulemaking at 24 A.A.R. 261, effective January 9, 2018 (Supp. 18-1).

**R9-6-602. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-602 renumbered to R9-6-202, new Section R9-6-601 adopted effective October 19, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former Section R9-6-602 renumbered to R9-6-1202 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-603. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Repealed effective October 19, 1993 (Supp. 93-4), new Section R9-6-603 adopted effective October 19, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former Section R9-6-603 renumbered

to R9-6-1203 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-604. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Repealed effective October 19, 1993 (Supp. 93-4). New Section made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Former Section R9-6-604 renumbered to R9-6-1204 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4).

**R9-6-605. Repealed****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-606. Emergency Expired****Historical Note**

Adopted as an emergency effective October 12, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency rule readopted without change effective February 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency rule readopted with changes effective July 3, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

**ARTICLE 7. REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY****R9-6-701. Definitions**

In addition to the definitions in A.R.S. § 36-671 and R9-6-101, the following definitions apply in this Article, unless otherwise specified:

1. "Child" means:
  - a. An individual 18 years of age or less, or
  - b. An individual more than 18 years of age attending school.
2. "Child care" means:
  - a. A child care facility as defined in A.R.S. § 36-881; or
  - b. A child care group home as defined in A.R.S. § 36-897.
3. "Child care administrator" means an individual, or the individual's designee, having daily control and supervision of a child care.
4. "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.
5. "Document" means information in written, photographic, electronic, or other permanent form.
6. "Enroll" means to accept for attendance at a school or child care.
7. "Entry" means the first day of attendance at a child care or at a specific grade level in a school.
8. "Immunization registry" means an electronic database maintained by a governmental health agency for the storage of immunization data for vaccines.
9. "In writing" means on paper or in a printable electronic format.

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10. "Medical exemption" means the written certification described in A.R.S. § 15-873(A)(2).
11. "Nurse" means a:
  - a. Registered nurse, as defined in A.R.S. § 32-1601; or
  - b. Practical nurse, as defined in A.R.S. § 32-1601.
12. "Parent" means:
  - a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A "custodian" as defined in A.R.S. § 8-201.
13. "Physician" has the same meaning as in A.R.S. § 15-871.
14. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
15. "School-based or child care-based vaccination information system" means an electronic database used and maintained by a school, child care, or group of schools or child cares for the storage of immunization data for vaccines.
16. "Signature" means:
  - a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
  - b. An electronic signature as defined in A.R.S. § 44-7002.

**Historical Note**

Former Section R9-6-115, Paragraph (47), renumbered and amended as R9-6-701 effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Former Section R9-6-701 renumbered to Section R9-6-328, new Section R9-6-701 renumbered from R9-6-501 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Former Section R9-6-701 renumbered to R9-6-702; new Section R9-6-701 made by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2).

Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-702. Required Immunizations for Child Care or School Entry**

Except as provided in R9-6-706, documentary proof of immunization, according to Table 7.1 or Table 7.2, for each of the following diseases is required for child care or school entry:

1. Diphtheria;
2. Tetanus;
3. Pertussis;
4. Hepatitis A, for a child 1 through 5 years of age in child care in Maricopa County;
5. Hepatitis B;
6. Poliomyelitis;
7. Measles (rubeola);
8. Mumps;
9. Rubella (German Measles);
10. *Haemophilus influenzae* type b, for a child two months through 59 months of age;
11. Varicella; and
12. Meningococcal disease.

**Historical Note**

Former Section R9-6-115, Paragraph (1), renumbered and amended as R9-6-702 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-702 renumbered to Section R9-6-302, new Section R9-6-702 renumbered from R9-6-502 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-702 renumbered to R9-6-703; new Section R9-6-702 renumbered from R9-6-701 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

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**Table 7.1. Immunization Requirements for Child Care or School Entry**

- Key:  
 DTaP = Diphtheria, tetanus, and acellular pertussis vaccine  
 DTP = Diphtheria, tetanus, and pertussis vaccine  
 Hep A = Hepatitis A vaccine  
 Hep B = Hepatitis B vaccine  
 Hib = *Haemophilus influenzae* type b vaccine  
 MMR = Measles, mumps, and rubella vaccine  
 MCV4 = Quadrivalent meningococcal vaccine  
 Polio = Inactivated poliomyelitis vaccine (IPV) or trivalent oral poliomyelitis vaccine (tOPV)  
 Td = Tetanus and diphtheria vaccine  
 Tdap = Tetanus, diphtheria, and acellular pertussis vaccine  
 VAR = Varicella vaccine  
 Kindergarten = The grade level in a school that precedes first grade

**A. Vaccine Doses Required for Child Care Attendance**

Vaccine Against ↓	Age →	2 months	4 months	6 months	12 months	15 months	18 months	19-59 months
Diphtheria, Tetanus, Pertussis		DTaP 1	DTaP 2	DTaP 3	---	DTaP 4	---	Documented 4 DTaP
Hepatitis B		Hep B 1	Hep B 2	---	Hep B 3	---	---	Documented 3 Hep B
<i>Haemophilus influenzae</i> type b		Hib 1	Hib 2	Hib 3 <sup>1</sup>	---	Hib 3 or 4 <sup>1</sup>	---	Documented 3-4 Hib, as specified in Note 3
Poliomyelitis		Polio 1 <sup>2</sup>	Polio 2 <sup>2</sup>	---	Polio 3 <sup>2</sup>	---	---	Documented 3 Polio
Measles, Mumps, Rubella		---	---	---	MMR 1	---	---	Documented 1 MMR
Varicella		---	---	---	VAR 1	---	---	Documented 1 VAR
Hepatitis A (Maricopa County only)		---	---	---	Hep A 1	---	Hep A 2	Documented 2 Hep A

<sup>1</sup> The recommended schedule for a four-dose Hib vaccine is two, four, and six months of age with a booster dose at 12-15 months of age. The recommended schedule for a three-dose Hib vaccine is two and four months of age with a booster dose at 12 -15 months of age.

<sup>2</sup> Bivalent and monovalent oral poliomyelitis vaccines do not meet these immunization requirements. An oral poliomyelitis vaccine received before April 2016 is assumed to be trivalent oral poliomyelitis vaccine, unless otherwise specified, and to satisfy immunization requirements.

**B. Vaccine Doses Required for School Attendance. A child at any age within the range designated by the black bar is required to have documentation of the indicated number of doses of the specified vaccine.**

Vaccine Against ↓	Age →	4 - 6 years and attendance in Kindergarten or 1st grade	7 - 10 years	11 years or older
Diphtheria, Tetanus, Pertussis		4 to 6 DTP/DTaP <sup>1</sup>	3 or 4 tetanus-diphtheria containing vaccines <sup>2</sup>	3 to 5 tetanus-diphtheria-containing vaccines, including 1 Tdap <sup>2, 3</sup>
Meningococcal invasive disease		---	---	1 MCV4
Hepatitis B		3 to 4 Hep B <sup>4</sup>		2 to 4 Hep B <sup>4, 5</sup>
Poliomyelitis		3 or 4 Polio <sup>6</sup>		
Measles, Mumps, Rubella		2 MMR		
Varicella zoster		1-2 VAR <sup>7</sup>		

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- 1 Only four doses of DTP/DTaP are required if the fourth dose of DTP/DTaP was received after the child’s fourth birthday; otherwise an additional dose is required after the child’s fourth birthday, up to a maximum of six doses.
- 2 Only three doses of tetanus-diphtheria-containing vaccine are required if the first dose of tetanus-diphtheria-containing vaccine was received on or after the child’s first birthday; otherwise four are required.
- 3 One dose of Tdap is required if five years have passed since the date of the child’s last dose of tetanus-diphtheria-containing vaccine and the child has not received Tdap. At least one dose of a tetanus-diphtheria-containing vaccine is required to have been administered within the previous 10 years.
- 4 Only three doses are required if the third dose was received at or after the child was 24 weeks of age; otherwise four are required.
- 5 Only two doses, at least four months apart, are required if the child received the adolescent series using the Merck Recombivax HB Adult Formulation vaccine when the child was 11-15 years of age.
- 6 Bivalent and monovalent oral poliomyelitis vaccines do not meet these immunization requirements. An oral poliomyelitis vaccine received before April 2016 is assumed to be trivalent oral poliomyelitis vaccine, unless otherwise specified, and to satisfy immunization requirements. Only three doses are required if the third dose was received after the child’s fourth birthday and at least six months after the second dose; otherwise four doses are required, with the last received after the child’s fourth birthday. Poliomyelitis vaccine is not required for individuals 18 years of age or older.
- 7 One dose is required if received by a child between 12 months and 12 years of age. A child who received a first dose of VAR at 13 years of age or older is required to receive a second dose if at least four weeks have passed since the date of the first dose.

**Historical Note**

Table 7.1 made by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**Table 7.2. Immunization Schedule for a Child Who Has Not Completed the Vaccine Series Required in Table 7.1 before Entry into a Child Care or School**

- A. If a child does not meet the applicable requirements in Table 7.1, the child is required to have the first dose of vaccine for each of the diseases indicated in R9-6-702 before school entry or no later than 15 calendar days after child care entry.
- B. If a child does not meet the applicable requirements in Table 7.1, the child is required to have the second and subsequent doses of vaccine for each of the diseases indicated in R9-6-702 either:
  1. Before school entry or no later than 15 calendar days after child care entry, or
  2. At the intervals specified below.

Vaccine Against ↓	Dose →	Intervals between Doses			
		2nd Dose	3rd Dose	4th Dose	5th Dose
<b>Diphtheria, Tetanus, Pertussis</b>					
Child < 7 years of age (DTP or a combination of DTP and DTaP)		No sooner than four weeks after the first dose	No sooner than four weeks after the second dose	No sooner than six months after the third dose	No sooner than six months after the fourth dose, if the fourth dose was received at < 4 years of age
Child 7 through 10 years of age (Tetanus-diphtheria containing vaccines)		No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the first dose was received at < 12 months of age	---
Child > 10 years of age (Tetanus-diphtheria containing vaccine, including one Tdap)		No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the first dose was received at < 12 months of age	---
<b>Poliomyelitis</b>					
Child < 4 years of age		No sooner than four weeks after the first dose	No sooner than four weeks after the second dose	No sooner than six months after the third dose, if the third dose was received at < 4 years of age	---
Child between 4 and 18 years of age		No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the third dose was received at < 4 years of age	---
<b>Measles, Mumps, Rubella</b> Child 4 years of age or older		No sooner than one month after the first dose	---	---	---
<b><i>Haemophilus influenzae</i> type b</b>					

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Child 7-11 months of age	No sooner than two months after the first dose	---	---	---
Child 12-14 months of age	No sooner than two months after the first dose	No sooner than two months after the second dose if the first or second dose was received at < 12 months of age	---	---
Child 15-59 months of age	--- (A child 15 through 59 months of age is required to have one dose of vaccine.)	---	---	---
<b>Hepatitis B</b>	No sooner than four weeks after the first dose  (Only two doses, at least four months apart, are required if the child received the adolescent series using the Merck Recombivax HB Adult Formulation vaccine when the child was 11-15 years of age.)	No sooner than four months after the first dose and two months after the second dose for a child ≥ 24 weeks of age who did not receive the adolescent series.	---	---
<b>Hepatitis A</b> (Maricopa County only)	No sooner than six months after the first dose	---	---	---
<b>Varicella</b> (A child 12 months through 12 years of age is required to have one dose of vaccine.)	No sooner than one month after the first dose for a child 13 years of age or older	---	---	---

**Historical Note**

Table 7.2 made by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-703. Responsibilities of Individuals and Local Health Agencies for Administering Vaccines**

- A. Upon request of a parent, a local health agency shall provide for the immunization of a child against any disease listed in R9-6-702.
- B. An individual administering a vaccine shall ensure that the dosage and route by which the vaccine is administered is:
  - 1. As recommended by the Centers for Disease Control and Prevention, or
  - 2. According to the manufacturer’s recommendations.
- C. Before administering a vaccine to a child, the individual administering the vaccine shall:
  - 1. Provide the child’s parent with the following information in writing:
    - a. A description of the disease,
    - b. A description of the vaccine,
    - c. A statement of the risks of the disease and the risks and benefits of immunization, and
    - d. Contraindications for administering the vaccine; and
  - 2. Obtain documentation from the child’s parent confirming that the child’s parent:
    - a. Was provided the information described in subsection (C)(1),
    - b. Was provided an opportunity to read the information described in subsection (C)(1),
    - c. Was provided an opportunity to ask questions, and

- d. Requests that the designated vaccine be administered to the child.
- D. Following the administration of a vaccine, the individual administering the vaccine shall provide to the child’s parent or, if a child is immunized at school, to the child to give to the child’s parent:
  - 1. Information in writing about:
    - a. The vaccine administered,
    - b. The reactions to the vaccine that might be expected, and
    - c. The course of action if a reaction to the vaccine occurs that may require medical attention; and
  - 2. Documentary proof of immunization, according to A.R.S. § 36-674 and R9-6-704(A).

**Historical Note**

Former Section R9-6-115, Paragraph (2), renumbered and amended as R9-6-703 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-703 renumbered to Section R9-6-303, new Section R9-6-703 renumbered from R9-6-503 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-703 renumbered to R9-6-704; new Section R9-6-703 renumbered from R9-6-702 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final

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expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-704. Standards for Documentary Proof of Immunization or Immunity**

A. An administrator of a school or a child care administrator shall accept any of the following as documentary proof of immunization for a child:

1. A copy of a document recording the immunizations administered to the child that contains:
  - a. The child's name;
  - b. The child's date of birth;
  - c. The type of vaccine administered;
  - d. The month, day, and year of each immunization; and
  - e. The name of the individual administering the vaccine or the name of the entity that the individual administering the vaccine represents;
2. A document from an Arizona school or child care recording the child's immunizations, including a print-out from a school-based or child care-based vaccination information system, that contains, in a Department-provided format:
  - a. The child's name;
  - b. The child's date of birth;
  - c. The type of vaccine administered;
  - d. The month, day, and year of each immunization;
  - e. The name and address of the school or child care; and
  - f. The name and signature of the individual at the school or child care providing the document to the child's parent and the date signed;
3. A document from a school in another state recording the child's immunizations; or
4. A printout from an immunization registry containing the information in subsections (A)(1)(a) through (e).

B. An administrator of a school or a child care administrator shall accept a certification of medical exemption from immunization due to immunity, as specified in R9-6-706(D), as documentary proof of immunity for a child.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-704 renumbered to Section R9-6-304, new Section R9-6-704 renumbered from R9-6-504 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-704 renumbered to R9-6-705; new Section R9-6-704 renumbered from R9-6-703 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-705. Responsibilities of Administrators of Schools, Child Care Administrators, and the Department**

A. An administrator of a school or a child care administrator shall ensure that:

1. For each child attending the school or child care, one of the following is maintained at the school or child care for each disease listed in R9-6-702:
  - a. Documentary proof of immunization, as specified in R9-6-704(A), according to Table 7.1;
  - b. Documentary proof of immunization, as specified in R9-6-704(A), demonstrating compliance with Table 7.2;
  - c. Documentary proof of immunity, as specified in R9-6-704(B) and according to R9-6-706(D); or

- d. A statement of exemption from immunization, as specified in R9-6-706(A) through (C);
2. Lists are maintained at the school or child care of children who:
  - a. Do not have documentary proof of:
    - i. Immunization for each disease listed in R9-6-702, according to Table 7.1; or
    - ii. Immunity for each disease listed in R9-6-702, according to R9-6-706(D);
  - b. Do not have documentary proof according to subsection (A)(1)(a) or (c) but are in compliance with Table 7.2; or
  - c. Have a statement of exemption from immunization, according to R9-6-706(A), (B), or (C), for any of the diseases listed in R9-6-702;
3. Except as provided in subsection (D), for a child enrolled in school who does not have one of the documents in subsection (A)(1) for each disease listed in R9-6-702:
  - a. The child's parent is notified in writing at the time of school enrollment or, for an enrolled child, at the time of review of immunization documentation that the child:
    - i. Is not in compliance with Arizona immunization requirements; and
    - ii. Except as required by 42 U.S.C. 11301, will be excluded from school entry, according to A.R.S. § 15-872(B), unless the documentation required in subsection (A)(1) is provided for each disease listed in R9-6-702 before school entry; and
  - b. The child is excluded from school entry if the required documentation is not provided before school entry; and
4. Except as provided in subsection (D), for a child enrolled in a child care who does not have one of the documents in subsection (A)(1) for each disease listed in R9-6-702:
  - a. The child's parent is notified in writing before or at the time of child care entry or, for an enrolled child, at the time of review of immunization documentation that the child:
    - i. Is not in compliance with Arizona immunization requirements, and
    - ii. May attend the child care for not more than 15 days from the date of child care entry without providing one of the documents in subsection (A)(1) for each disease listed in R9-6-702; and
  - b. The child is excluded from child care entry if the required documentation is not provided for the child within 15 days following child care entry.

B. If an administrator of a school or a child care administrator questions the accuracy of a document provided for a child as documentary proof of immunization or immunity and is unable to verify the accuracy of the document, the administrator of the school or the child care administrator shall notify the child's parent in writing that:

1. For a child attending a school:
  - a. The administrator of the school cannot verify compliance with Arizona immunization requirements on the basis of the documents provided; and
  - b. Except as required by 42 U.S.C. 11301, the child will be excluded from school entry, according to A.R.S. § 15-872(B), until the child's parent provides to the school documentation that meets the requirements in R9-6-704 or R9-6-706;
2. For a child attending a child care:

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- a. The child care administrator cannot verify compliance with Arizona immunization requirements on the basis of the documents provided; and
- b. The child may attend the child care for not more than 15 days after the date of child care entry without the child's parent providing to the child care documentation that meets the requirements in R9-6-704 or R9-6-706; and
3. The child's parent may bring the child to a physician, a registered nurse practitioner, a local health agency, or, as authorized under A.R.S. § 32-1974, a pharmacist as defined in A.R.S. § 32-1901 to:
- Review the child's immunization history,
  - Provide needed immunizations, and
  - Provide the required documentation.
- C.** An administrator of a school or a child care administrator shall not allow a child to attend the school or child care during an outbreak of a disease listed in R9-6-702, as determined by the Department or a local health agency, for which the child lacks:
- Documentary proof of immunization, according to R9-6-704(A); or
  - Documentary proof of immunity, according to R9-6-704(B).
- D.** If the Department receives notification from the Centers for Disease Control and Prevention that there is a shortage of a vaccine for a disease listed in R9-6-702, or that the amount of a vaccine for a disease listed in R9-6-702 is being limited, the Department shall:
- Determine whether:
    - Compliance with exclusion requirements in subsections (A)(3) and (4) is suspended for the vaccine in limited supply, or
    - A different vaccine or a combination of different vaccines may substitute for the vaccine in limited supply;
  - Provide notification in writing to each school and child care in this state:
    - Of the shortage or limitation of the vaccine;
    - Whether the Department is:
      - Suspending compliance with exclusion requirements in subsections (A)(3) and (4) on the basis of the vaccine in limited supply; or
      - Recommending an alternative vaccine or combination of vaccines to satisfy the requirement R9-6-702 for the vaccine in limited supply and, if so, the Department's recommendation; and
    - If known, when the shortage or limitation of the vaccine is expected to end and the vaccine to be available; and
  - Upon receiving notification from the Centers for Disease Control and Prevention that the vaccine is available, notify each school and child care in this state:
    - That the vaccine is available, and
    - If applicable, the date that compliance with exclusion requirements in subsections (A)(3) and (4) will be reinstated.
- E.** The Department shall notify each school and child care in this state if the Department no longer requires compliance with subsection (A) for a disease listed in R9-6-702.
- Historical Note**
- Adopted effective January 28, 1987 (Supp. 87-1). Former Section R9-6-705 renumbered to Section R9-6-305, new Section R9-6-705 renumbered from R9-6-505 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-705 renumbered to R9-6-706; new Section R9-6-705 renumbered from R9-6-704 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).
- R9-6-706. Exemptions from Immunizations**
- A.** For a child attending a school, the child is exempt from the applicable immunization requirements in R9-6-702 for personal beliefs, as allowed by A.R.S. § 15-873(A)(1), if the child's parent submits to the school a statement of exemption from immunization for personal beliefs, in a Department-provided format, that contains:
- The parent's name,
  - The child's name,
  - The child's date of birth,
  - The immunizations from which the child's parent is requesting an exemption,
  - A statement that the parent is requesting the exemption based on personal beliefs, and
  - The signature of the child's parent and the date signed.
- B.** For a child attending a child care, the child is exempt from the applicable immunization requirements in R9-6-702 for religious beliefs, as allowed in A.R.S. § 36-883(C), if the child's parent submits to the child care a statement of exemption from immunization for religious beliefs, in a Department-provided format, that contains:
- The parent's name,
  - The child's name;
  - The child's date of birth;
  - The immunizations from which the child's parent is requesting an exemption;
  - A statement that the parent is requesting the exemption based on religious beliefs, and
  - The signature of the child's parent and the date signed.
- C.** A child is exempt from the applicable immunization requirements in R9-6-702, as allowed by A.R.S. § 15-873(A)(2), if the child's parent submits to a school or child care a certification of medical exemption from immunization, in a Department-provided format, that contains:
- The parent's name;
  - The child's name;
  - The child's date of birth;
  - The immunizations from which the child's parent is requesting an exemption;
  - A statement that the parent is requesting a medical exemption according to A.R.S. § 15-873(A)(2);
  - Statements from a physician or registered nurse practitioner that:
    - The immunizations specified according to subsection (C)(4) may be harmful to the child's health;
    - Indicate the specific nature of the medical condition or circumstance that precludes immunization;
    - Indicate whether the medical exemption is permanent or temporary; and
    - If the medical exemption is temporary, provide the date the medical exemption ends;
  - The signature of the physician or registered nurse practitioner providing the medical exemption and the date signed; and
  - The signature of the child's parent and the date signed;
- D.** A child is exempt from the applicable immunization requirements in R9-6-702 due to immunity if the child's parent submits to a school or child care:
- A certification of medical exemption from immunization due to immunity, in a Department-provided format, that contains:
    - The parent's name;

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- b. The child's name;
  - c. The child's date of birth;
  - d. The name of each disease for which the child's parent is requesting an exemption from immunization requirements;
  - e. A statement that the parent is requesting a medical exemption from immunization due to the child's immunity to a disease;
  - f. A statement from a physician or registered nurse practitioner that the physician or registered nurse practitioner has determined that the child is immune to the disease specified according to subsection (D)(1)(d), for which an exemption from immunization requirements is being requested, based on:
    - i. For measles, rubella, or varicella, a review by the physician or registered nurse practitioner of laboratory evidence of immunity for the child; or
    - ii. For a disease other than measles, rubella, or varicella, a review by the physician or registered nurse practitioner of either:
      - (1) Laboratory evidence of immunity for the child, or
      - (2) The medical records of the physician or registered nurse practitioner;
  - g. The signature of the physician or registered nurse practitioner providing the medical exemption and the date signed; and
  - h. The signature of the child's parent and the date signed; and
2. If applicable, a copy of the laboratory evidence of immunity.
- E. An administrator of a school or a child care administrator shall:
- 1. Include a child's exemption from the requirements in R9-6-702 in the documentation required in R9-6-705(A)(1); and
  - 2. If a child has a temporary medical exemption:
    - a. Allow the child to attend a school or child care until the date the temporary exemption ends; and
    - b. At least 30 calendar days before the temporary medical exemption ends, notify the child's parent in writing of the date by which the child is required to complete all immunizations.

**Historical Note**

Former Section R9-6-115, Paragraph (3), renumbered and amended as R9-6-706 effective January 28, 1987 (Supp. 87-1). Former Section R9-6-706 renumbered to Section R9-6-306, new Section R9-6-706 renumbered from R9-6-506 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former Section R9-6-706 renumbered to R9-6-707; new Section R9-6-706 renumbered from R9-6-705 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**Table 1. Renumbered****Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Article 7, Table 1 renumbered from Article 5, Table 1 and amended effective October 19, 1993 (Supp. 93-4).

Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Table 1 renumbered to follow R9-6-707 by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**Table 2. Renumbered****Historical Note**

Adopted effective January 20, 1992 (Supp. 92-1). Article 7, Table 2 renumbered from Article 5, Table 2 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 496, effective January 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1310, effective March 17, 2000 (Supp. 00-1). Table 2 renumbered to follow R9-6-707 by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3).

**R9-6-707. Reporting Requirements**

- A. By November 15 of each year, an administrator of a school shall submit to the Department a report, in a Department-provided format, that contains:
1. The name, the physical address, and, if different, the mailing address of the school;
  2. The date of the report;
  3. Whether the school is a:
    - a. Charter school, as defined in A.R.S. § 15-101;
    - b. Private school, as defined in A.R.S. § 15-101; or
    - c. Public school, as defined in A.R.S. § 15-101;
  4. The name, email address, and telephone number of an individual to contact for the school;
  5. The name and district number of the school district, if applicable;
  6. The county in which the school is located;
  7. The number of children enrolled at the school in designated grades, as of the date of the report; and
  8. The number of children in each of the designated grades who:
    - a. Have received each immunization required according to Table 7.1;
    - b. Have received an immunization required according to Table 7.1 or submitted a certification of medical exemption from immunization due to immunity, according to R9-6-706(D), for each of the diseases in R9-6-702, including the number for each disease for which certification of medical exemption from immunization due to immunity was submitted;
    - c. Have an exemption from immunization for personal beliefs, according to R9-6-706(A), for one or more of the diseases in R9-6-702, including the number for each disease;
    - d. Have a medical exemption from immunization, according to R9-6-706(C) for one or more of the diseases in R9-6-702, including:
      - i. The number for each disease, and
      - ii. Whether the medical exemption is temporary or permanent; or
    - e. Are receiving immunizations required according to Table 7.2, and the number of doses of each vaccine received.
- B. By November 15 of each year, a child care administrator shall submit to the Department a report, in a Department-provided format, that contains:

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1. The name, the physical address, and, if different, the mailing address of the child care;
2. The date of the report;
3. The name, email address, and telephone number of an individual to contact for the child care;
4. The Department license or certificate number of the child care, as applicable;
5. The name of the child care administrator; and
6. The number of children attending the child care who are at least 18 months of age and not attending a school, as of the date of submission of the report, in each of the following categories:
  - a. Children who have received each immunization required according to Table 7.1;
  - b. Children who have received an immunization required according to Table 7.1 or submitted a certification of medical exemption from immunization due to immunity, according to R9-6-706(D), for each of the diseases in R9-6-702, including the number for each disease for which laboratory evidence of immunity was submitted;
  - c. Children who have an exemption from immunization for religious beliefs, according to R9-6-706(B), for one or more of the diseases in R9-6-702, including the number for each disease;
  - d. Children who have a medical exemption from immunization, according to R9-6-706(C), for one or more of the diseases in R9-6-702, including:
    - i. The number for each disease, and
    - ii. Whether the medical exemption is temporary or permanent; or
  - e. Children who are receiving immunizations required according to Table 7.2, and the number of doses of each vaccine received.

**Historical Note**

Former Section R9-6-115, Paragraph (5), renumbered and amended as R9-6-707 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-307 effective October 19, 1993 (Supp. 93-4). Adopted effective April 4, 1997 (Supp. 97-4). Former Section R9-6-707 renumbered to R9-6-708; new Section R9-6-707 renumbered from R9-6-706 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

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

Table 1 renumbered from placement after R9-6-706 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Table 1 repealed by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

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

Table 2 renumbered from placement after R9-6-706 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 2283, effective June 7, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R.

4106, effective January 5, 2008 (Supp. 07-4). Table 2 repealed by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-708. Release of Immunization Information**

In addition to the persons who have access to immunization information according to A.R.S. § 36-135(D), and consistent with the limitations in A.R.S. § 36-135(E) and (H), the Department may release immunization information to:

1. An authorized representative of a local health agency for the control, investigation, analysis, or follow-up of disease;
2. A child care administrator, to determine the immunization status of a child in the child care;
3. An authorized representative of the federal Women, Infants, and Children Program administered by the Department, to determine the immunization status of children enrolled in the federal Women, Infants, and Children Program;
4. An individual or organization authorized by the Department to conduct medical research to evaluate medical services and health-related services, as defined in A.R.S. § 36-401, health quality, immunizations data quality, and efficacy; or
5. An authorized representative of an out-of-state agency, including:
  - a. A state health department,
  - b. A health agency,
  - c. A school or child care,
  - d. A health care provider, or
  - e. A state agency that has legal custody of a child.

**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-309 effective October 19, 1993 (Supp. 93-4). New Section R9-6-708 renumbered from R9-6-707 and amended by final rulemaking at 8 A.A.R. 4274, effective September 16, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018 (Supp. 18-3).

**R9-6-709. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (6), renumbered and amended as R9-6-709 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-310 effective October 19, 1993 (Supp. 93-4).

**R9-6-710. Renumbered****Historical Note**

Former Section R9-115, Paragraph (7), renumbered and amended as R9-6-710 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-311 effective October 19, 1993 (Supp. 93-4).

**R9-6-711. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (8), renumbered and amended as R9-6-711 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-313 effective October 19, 1993 (Supp. 93-4).

**R9-6-712. Renumbered**

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**Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
Renumbered to Section R9-6-315 effective October 19, 1993 (Supp. 93-4).

**R9-6-713. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (9), renumbered and amended as R9-6-713 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-316 effective October 19, 1993 (Supp. 93-4).

**R9-6-714. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (10), renumbered and amended as R9-6-714 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-317 effective October 19, 1993 (Supp. 93-4).

**R9-6-715. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (11), renumbered and amended as R9-6-715 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-319 effective October 19, 1993 (Supp. 93-4).

**R9-6-716. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
Renumbered to Section R9-6-320 effective October 19, 1993 (Supp. 93-4).

**R9-6-717. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (12), renumbered and amended as R9-6-717 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-321 effective October 19, 1993 (Supp. 93-4).

**R9-6-718. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (13), renumbered and amended as R9-6-718 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-322 effective October 19, 1993 (Supp. 93-4).

**R9-6-719. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1) Renumbered to Section R9-6-323 effective October 19, 1993 (Supp. 93-4).

**R9-6-720. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (14), renumbered and amended as R9-6-720 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-324 effective October 19, 1993 (Supp. 93-4).

**R9-6-721. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (15), renumbered and amended as R9-6-721 effective January 28, 1987

(Supp. 87-1). Renumbered to Section R9-6-325 effective October 19, 1993 (Supp. 93-4).

**R9-6-722. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (18), renumbered and amended as R9-6-722 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-327 effective October 19, 1993 (Supp. 93-4).

**R9-6-723. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (16), renumbered and amended as R9-6-723 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-330 effective October 19, 1993 (Supp. 93-4).

**R9-6-724. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (17), renumbered and amended as R9-6-724 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-331 effective October 19, 1993 (Supp. 93-4).

**R9-6-725. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
Renumbered to Section R9-6-332 effective October 19, 1993 (Supp. 93-4).

**R9-6-726. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
Renumbered to Section R9-6-333 effective October 19, 1993 (Supp. 93-4).

**R9-6-727. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1).  
Renumbered to Section R9-6-334 effective October 19, 1993 (Supp. 93-4).

**R9-6-728. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (19), renumbered and amended as R9-6-728 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-335 effective October 19, 1993 (Supp. 93-4).

**R9-6-729. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (20), renumbered and amended as R9-6-729 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-336 effective October 19, 1993 (Supp. 93-4).

**R9-6-730. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (21), renumbered and amended as R9-6-730 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-337 effective October 19, 1993 (Supp. 93-4).

**R9-6-731. Renumbered**

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**Historical Note**

Former Section R9-6-115, Paragraph (22), renumbered and amended as R9-6-731 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-338 effective October 19, 1993 (Supp. 93-4).

**R9-6-732. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (23), renumbered and amended as R9-6-732 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-339 effective October 19, 1993 (Supp. 93-4).

**R9-6-733. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (45), renumbered and amended as R9-6-733 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-340 effective October 19, 1993 (Supp. 93-4).

**R9-6-734. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (24), renumbered and amended as R9-6-734 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-341 effective October 19, 1993 (Supp. 93-4).

**R9-6-735. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (25), renumbered and amended as R9-6-735 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-342 effective October 19, 1993 (Supp. 93-4).

**R9-6-736. Renumbered****Historical Note**

Former R9-6-115, Paragraph (26), renumbered and amended as R9-6-736 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-343 effective October 19, 1993 (Supp. 93-4).

**R9-6-737. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-344 effective October 19, 1993 (Supp. 93-4).

**R9-6-738. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (27), renumbered and amended as R9-6-738 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-345 effective October 19, 1993 (Supp. 93-4).

**R9-6-739. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-346 effective October 19, 1993 (Supp. 93-4).

**R9-6-740. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (28), renumbered and amended as R9-6-740 effective January 28, 1987

(Supp. 87-1). Renumbered to Section R9-6-347 effective October 19, 1993 (Supp. 93-4).

**R9-6-741. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (29), renumbered and amended as R9-6-741 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-348 effective October 19, 1993 (Supp. 93-4).

**R9-6-742. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (30), renumbered and amended as R9-6-742 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-349 effective October 19, 1993 (Supp. 93-4).

**R9-6-743. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (31), renumbered and amended as R9-6-743 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-350 effective October 19, 1993 (Supp. 93-4).

**R9-6-744. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (32), renumbered and amended as R9-6-744 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-351 effective October 19, 1993 (Supp. 93-4).

**R9-6-745. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (33), renumbered and amended as R9-6-745 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-352 effective October 19, 1993 (Supp. 93-4).

**R9-6-746. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (34.) renumbered and amended as R9-6-746 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-353 effective October 19, 1993 (Supp. 93-4).

**R9-6-747. Repealed****Historical Note**

Former Section R9-6-115, Paragraph (35), renumbered and amended as R9-6-747 effective January 28, 1987 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

**R9-6-748. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (36), renumbered and amended as R9-6-748 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-354 effective October 19, 1993 (Supp. 93-4).

**R9-6-749. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (37), renumbered and amended as R9-6-749 effective January 28, 1987

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(Supp. 87-1). Renumbered to Section R9-6-355 effective October 19, 1993 (Supp. 93-4).

**R9-6-750. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (38), renumbered and amended as R9-6-750 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-356 effective October 19, 1993 (Supp. 93-4).

**R9-6-751. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (39), renumbered and amended as R9-6-751 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-358 effective October 19, 1993 (Supp. 93-4).

**R9-6-752. Renumbered****Historical Note**

Adopted effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-359 effective October 19, 1993 (Supp. 93-4).

**R9-6-753. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (40), renumbered and amended as R9-6-753 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-360 effective October 19, 1993 (Supp. 93-4).

**R9-6-754. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (41), renumbered and amended as R9-6-754 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-361 effective October 19, 1993 (Supp. 93-4).

**R9-6-755. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (42), renumbered and amended as R9-6-755 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-362 effective October 19, 1993 (Supp. 93-4).

**R9-6-756. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (43), renumbered and amended as R9-6-756 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-363 effective October 19, 1993 (Supp. 93-4).

**R9-6-757. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (44), renumbered and amended as R9-6-757 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-364 effective October 19, 1993 (Supp. 93-4).

**R9-6-758. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (4), renumbered and amended as R9-6-758 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-365 effective October 19, 1993 (Supp. 93-4).

**R9-6-759. Renumbered****Historical Note**

Former Section R9-6-115, Paragraph (46), renumbered and amended as R9-6-759 effective January 28, 1987 (Supp. 87-1). Renumbered to Section R9-6-366 effective October 19, 1993 (Supp. 93-4).

**ARTICLE 8. ASSAULTS ON PUBLIC SAFETY EMPLOYEES AND VOLUNTEERS**

*New Article 8, consisting of Sections R9-6-801 through R9-6-803, made by final rulemaking at 8 A.A.R. 5214, effective February 1, 2003 (Supp. 02-4).*

**R9-6-801. Definitions**

In addition to the definitions in A.R.S. § 13-1210 and R9-6-101, the following definitions apply in this Article unless otherwise specified:

1. "Employer" means an individual in the senior leadership position with an agency or entity for which a named employee or volunteer works or that individual's designee.
2. "Named employee or volunteer" means one of the following who is listed as the assaulted individual in a petition, filed under A.R.S. § 13-1210 and granted by a court:
  - a. Public safety employee or volunteer, or
  - b. Arizona State Hospital employee.
3. "Occupational health provider" means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a named employee or volunteer works.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989. Amended as an emergency effective June 26, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Emergency amendment readopted without change effective October 17, 1989 (Supp. 89-4). Amended effective September 19, 1990 (Supp. 90-3). Renumbered to R9-6-401 effective October 19, 1993 (Supp. 93-4). New Section made by final rulemaking at 8 A.A.R. 5214, effective February 1, 2003 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

Amended by final expedited rulemaking at 24 A.A.R. 2758, effective September 11, 2018 (Supp. 18-3).

**R9-6-802. Notice of Test Results**

**A.** Within 10 working days after the date of receipt of a laboratory report for a test ordered by a health care provider as a result of a court order issued under A.R.S. § 13-1210, the ordering health care provider shall:

1. If the test is conducted on the blood of a court-ordered subject who is incarcerated or detained:
  - a. Provide a written copy of the laboratory report to the chief medical officer of the correctional facility in

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- which the court-ordered subject is incarcerated or detained; and
- b. Notify the occupational health provider in writing of the results of the test; and
2. If the test is conducted on the blood of a court-ordered subject who is not incarcerated or detained:
    - a. Unless the court-ordered subject is deceased, notify the court-ordered subject as specified in subsection (D);
    - b. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
    - c. Notify the occupational health provider in writing of the results of the test.
- B.** Within five working days after the date of receipt of a laboratory report for a court-ordered subject who is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained shall:
1. Notify the court-ordered subject as specified in subsection (D);
  2. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
  3. Notify the officer in charge of the correctional facility as specified in subsection (E).
- C.** Within five working days after an occupational health provider receives written notice of test results as required in subsection (A), the occupational health provider shall notify:
1. The named employee or volunteer as specified in subsection (D); and
  2. The employer as specified in subsection (E).
- D.** An individual who provides notice to a court-ordered subject or named employee or volunteer as required under subsection (A), (B), or (C) shall describe the test results and provide or arrange for the court-ordered subject or named employee or volunteer to receive the following information about each agent for which the court-ordered subject was tested:
1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. The average window period for the agent;
  4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
  5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
  6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
  7. The availability of assistance from local health agencies or other resources; and
  8. The confidential nature of the court-ordered subject's test results.
- E.** An individual who provides notice to the officer in charge of a correctional facility, as required under subsection (B), or to an employer, as required under subsection (C), shall describe the test results and provide or arrange for the officer in charge of the facility or the employer to receive the following information about each agent for which a court-ordered subject's test results indicate the presence of infection:
1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. Measures to reduce the likelihood of transmitting the agent to others;
  4. The availability of assistance from local health agencies or other resources; and
  5. The confidential nature of the court-ordered subject's test results.
- F.** An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the court-ordered subject and, if the court-ordered subject is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained.
- G.** An individual who provides notice under this Section shall protect the confidentiality of the court-ordered subject's personal identifying information and test results.
- H.** A health care provider who orders a test on the blood of a court-ordered subject who is not incarcerated or detained may, at the time the court-ordered subject is seen by the ordering health care provider, present the court-ordered subject with a telephone number and instruct the court-ordered subject to contact the ordering health care provider after a stated period of time for notification of the test results.
- I.** A health care provider who orders a test has not satisfied the obligation of the health care provider to notify under subsection (A) if:
1. The health care provider provides a telephone number and instructions, as allowed by subsection (H), for a court-ordered subject to contact the ordering health care provider and receive the information specified in subsection (D); and
  2. The court-ordered subject does not contact the ordering health care provider.
- J.** A health care provider who orders a test on a court-ordered subject's blood shall comply with all applicable reporting requirements contained in this Chapter.

**Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired.

Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Renumbered to R9-6-402 effective October 19, 1993 (Supp. 93-4). New Section made by final rulemaking at 8 A.A.R. 5214, effective February 1, 2003 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final

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expedited rulemaking at 24 A.A.R. 2758, effective September 11, 2018 (Supp. 18-3).

Renumbered to R9-6-405 effective October 19, 1993 (Supp. 93-4).

**R9-6-803. Repealed****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Renumbered to R9-6-403 effective October 19, 1993 (Supp. 93-4). New Section made by final rulemaking at 8 A.A.R. 5214, effective February 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**R9-6-804. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (A) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered to R9-6-404 effective October 19, 1993 (Supp. 93-4).

**R9-6-805. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (B), Paragraph (2) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2).

**R9-6-806. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Renumbered to R9-6-406 effective October 19, 1993 (Supp. 93-4).

**R9-6-807. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Emergency not renewed. Former Section R9-6-808 renumbered as Section R9-6-807, amended, and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (C) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered to R9-6-407 effective October 19, 1993 (Supp. 93-4).

**R9-6-808. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Former Section R9-6-809 renumbered as Section R9-6-808, amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered to R9-6-408 effective October 19, 1993 (Supp. 93-4).

**ARTICLE 9. HEALTH PROFESSIONAL EXPOSURES****R9-6-901. Definitions**

In this Article, unless otherwise specified:

1. "Employer" means an individual in the senior leadership position with the agency or entity for which a health professional works or that individual's designee.
2. "Health professional" means the same as in A.R.S. § 32-3201.

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3. "Occupational health provider" means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a health professional works.
4. "Petitioner" means a health professional who petitions a court, under A.R.S. § 32-3207, to order testing of an individual.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-901 recodified to R9-6-1001 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**R9-6-902. Notice of Test Results**

- A. Within 10 working days after the date of receipt of a laboratory report for a test ordered by a health care provider as a result of a court order issued under A.R.S. § 32-3207, the ordering health care provider shall:
  1. If the test is conducted on the blood of a court-ordered subject who is incarcerated or detained:
    - a. Provide a written copy of the laboratory report to the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained; and
    - b. Notify the petitioner's occupational health provider in writing of the results of the test; and
  2. If the test is conducted on the blood of a court-ordered subject who is not incarcerated or detained:
    - a. Unless the court-ordered subject is deceased, notify the court-ordered subject as specified in subsection (D);
    - b. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
    - c. Notify the petitioner's occupational health provider in writing of the results of the test.
- B. Within five working days after the date of receipt of a laboratory report for a court-ordered subject who is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained shall:
  1. Notify the court-ordered subject as specified in subsection (D);
  2. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
  3. Notify the officer in charge of the correctional facility as specified in subsection (E).
- C. Within five working days after the petitioner's occupational health provider receives written notice of test results as required in subsection (A), the petitioner's occupational health provider shall notify the petitioner, as specified in subsection (D), and the petitioner's employer, as specified in subsection (E).
- D. An individual who provides notice to a court-ordered subject or petitioner as required under subsection (A), (B) or (C) shall describe the test results and provide or arrange for the court-ordered subject or petitioner to receive the following information about each agent for which the court-ordered subject was tested:
  1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. The average window period for the agent;
  4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
  5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
  6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
  7. The availability of assistance from local health agencies or other resources; and
  8. The confidential nature of the court-ordered subject's test results.
- E. An individual who provides notice to the officer in charge of a correctional facility, as required under subsection (B), or to the petitioner's employer, as required under subsection (C), shall describe the test results and provide or arrange for the officer in charge of the facility or the employer to receive the following information about each agent for which a court-ordered subject's test results indicate the presence of infection:
  1. A description of the disease or syndrome caused by the agent, including its symptoms;
  2. A description of how the agent is transmitted to others;
  3. Measures to reduce the likelihood of transmitting the agent to others;
  4. The availability of assistance from local health agencies or other resources; and
  5. The confidential nature of the court-ordered subject's test results.
- F. An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the court-ordered subject and, if the court-ordered subject is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained.
- G. An individual who provides notice under this Section shall protect the confidentiality of the court-ordered subject's personal identifying information and test results.
- H. A health care provider who orders a test on the blood of a court-ordered subject who is not incarcerated or detained may, at the time the court-ordered subject is seen by the ordering health care provider, present the court-ordered subject with a telephone number and instruct the court-ordered subject to contact the ordering health care provider after a stated period of time for notification of the test results.
- I. A health care provider who orders a test has not satisfied the obligation of the health care provider to notify under subsection (A) if:
  1. The health care provider provides a telephone number and instructions, as allowed by subsection (H), for a court-ordered subject to contact the ordering health care provider and receive the information specified in subsection (D); and
  2. The court-ordered subject does not contact the ordering health care provider.
- J. A health care provider who orders a test on a court-ordered subject's blood shall comply with all applicable reporting requirements contained in this Chapter.

**Historical Note**

Section renumbered from R9-6-409 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-902 recodified to R9-6-1002

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at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2).  
New Section made by final rulemaking at 14 A.A.R.  
1502, effective April 1, 2008 (Supp. 08-2).

**Exhibit A. Recodified****Historical Note**

Exhibit A renumbered from Article 4, Exhibit A and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Exhibit A recodified to Article 10, Exhibit A at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2).

**Exhibit B. Recodified****Historical Note**

Exhibit A renumbered from Article 4, Exhibit A and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Exhibit B recodified to Article 10, Exhibit B at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2).

**R9-6-903. Recodified****Historical Note**

Section renumbered from R9-6-410 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-903 recodified to R9-6-1003 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2).

**ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION****R9-6-1001. Definitions**

In this Article, unless otherwise specified:

1. "Governing board" means a group of individuals, elected as specified in A.R.S. Title 15, Chapter 4, Article 2, to carry out the duties and functions specified in A.R.S. Title 15, Chapter 3, Article 3.
2. "School district" means the same as in A.R.S. § 15-101.
3. "Superintendent of a school district" means an individual appointed by the governing board of a school district to oversee the operation of schools within the school district.

**Historical Note**

New Section recodified from R9-6-901 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final expedited rulemaking at 24 A.A.R. 2761, effective September 11, 2018 (Supp. 18-3).

**R9-6-1002. Local Health Agency Requirements**

For each HIV-infected individual or suspect case, a local health agency shall comply with the requirements in R9-6-347.

**Historical Note**

New Section recodified from R9-6-902 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Former R9-6-1002 renumbered to R9-6-1003; new R9-6-1002 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-1003. Expired****Historical Note**

New Section recodified from R9-6-903 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Former R9-6-1003 renumbered to R9-6-1004; new R9-6-1003 renumbered from R9-6-1002 and amended by final

rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3).

**Exhibit A. Expired****Historical Note**

Exhibit A recodified from Article 9, Exhibit A at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2).  
Exhibit A repealed; new Exhibit A made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Exhibit A expired under A.R.S. § 41-1056(J) at 19 A.A.R. 1928, effective April 30, 2013 (Supp. 13-3).

**Exhibit B. Repealed****Historical Note**

Exhibit B recodified from Article 9, Exhibit B at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Exhibit B repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**R9-6-1004. Court-ordered HIV-related Testing**

- A. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
- B. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
- C. When a court orders a test under A.R.S. § 8-341 or 13-1415 to detect HIV infection, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
  1. A copy of the court order, including an identifying number associated with the court order;
  2. The name and address of the victim; and
  3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.
- D. A person who tests a specimen of blood or another body fluid from a subject to detect HIV infection as authorized by a court order issued under A.R.S. § 8-341 or 13-1415 shall:
  1. Use a screening test; and
  2. If the test results from a screening test on the specimen indicate a positive result, retest the specimen using a confirmatory test.
- E. A person who performs a test described in subsection (D) shall report the test results for each subject to the submitting entity within five working days after obtaining the test results.
- F. A submitting entity that receives the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. § 8-341 or 13-1415 shall:
  1. Notify the Department within five working days after receiving the results of the test to detect HIV infection;
  2. Provide to the Department:
    - a. A written copy of the court order,
    - b. A written copy of the results of the test to detect HIV infection, and
    - c. The name and telephone number of the submitting entity or submitting entity's designee; and
  3. Either:
    - a. Comply with the requirements in:
      - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and

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- ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
- b. Provide to the Department or the local health agency in whose designated service area the subject is living:
  - i. The name and address of the subject;
  - ii. A written copy of the results of the test to detect HIV infection, if not provided as specified in subsection (F)(2)(b); and
  - iii. Notice that the submitting entity did not provide notification as specified in subsection (F)(3)(a).
- G.** If the Department or a local health agency is notified by a submitting entity as specified in subsection (F)(3)(b), the Department or local health agency shall comply with the requirements in:
  - 1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
  - 2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
- H.** When the Department receives a written copy of the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. § 8-341 or 13-1415, the Department shall either:
  - 1. Provide to the victim:
    - a. A description of the results of the test to detect HIV infection;
    - b. The information specified in R9-6-802(D); and
    - c. A written copy of the test results; or
  - 2. Provide to the local health agency in whose designated service area the victim is living:
    - a. The name and address of the victim,
    - b. A written copy of the results of the test to detect HIV infection, and
    - c. Notice that the Department did not provide notification as specified in subsection (H)(1).
- I.** If a local health agency is notified by the Department as specified in subsection (H)(2), the local health agency shall:
  - 1. Provide to the victim:
    - a. A description of the results of the test to detect HIV infection;
    - b. The information specified in R9-6-802(D); and
    - c. A written copy of the test results; or
  - 2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect HIV infection.
- 2. Collect a specimen of blood from the individual;
- 3. Record the following information in a Department-provided format:
  - a. The individual's date of birth;
  - b. The individual's race and ethnicity;
  - c. The individual's gender;
  - d. The date and time the blood specimen was collected;
  - e. The type of screening test;
  - f. Information about the individual's risk factors for becoming infected with or transmitting HIV; and
  - g. The name, address, and telephone number of the person collecting the blood specimen;
- 4. Before the individual leaves the building occupied by the Department or local health agency:
  - a. Test the individual's specimen of blood using the screening test for HIV specified in subsection (B)(3);
  - b. Provide the results of the screening test to the individual;
  - c. Enter the test results in the record established according to subsection (B)(3); and
  - d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected:
    - i. Assist the individual to connect with persons that may have additional resources available for the individual; and
    - ii. Provide confirmatory testing or submit the specimen of blood to the Arizona State Laboratory for confirmatory testing by:
      - (1) Assigning to the blood specimen an identification number corresponding to the record established according to subsection (B)(3);
      - (2) Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and
      - (3) Sending the blood specimen and the record specified in subsection (B)(3) to the Arizona State Laboratory for confirmatory testing; and
- 5. If anonymous HIV testing is provided by a local health agency, submit the record specified in subsection (B)(3) to the Department.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final expedited rulemaking at 24 A.A.R. 2761, effective September 11, 2018 (Supp. 18-3).

**R9-6-1006. Notification****R9-6-1005. Anonymous HIV Testing**

- A.** A local health agency and the Department shall offer anonymous HIV testing to individuals.
  - B.** If an individual requests anonymous HIV testing, the Department or a local health agency shall:
    - 1. Provide to the individual requesting anonymous HIV testing:
      - a. Health education about HIV,
      - b. The meaning of HIV test results, and
- A.** The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection, as required under A.R.S. § 36-664(I), if all of the following conditions are met:
- 1. The Department receives the report of risk for HIV infection in a document that includes the following:
    - a. The name and address of the individual reported to be at risk for HIV infection or enough other identifying information about the individual to enable the individual to be recognized and located,

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- b. The name and address of the HIV-infected individual placing the individual named under subsection (A)(1)(a) at risk for HIV infection,
  - c. The name and address of the individual making the report, and
  - d. The type of exposure placing the individual named under subsection (A)(1)(a) at risk for HIV infection;
2. The individual making the report is in possession of confidential HIV-related information; and
  3. The Department determines that the information provided in the report is accurate and contains sufficient detail to:
    - a. Indicate that the exposure described as required in subsection (A)(1)(d) constitutes a significant exposure for the individual reported to be at risk for HIV infection, and
    - b. Enable the individual reported to be at risk for HIV infection to be recognized
- B.** As authorized under A.R.S. § 36-136(M), the Department shall notify the superintendent of a school district in a confidential document that a pupil of the school district tested positive for HIV if the Department determines that:
1. The pupil places others in the school setting at risk for HIV infection; and
  2. The school district has an HIV policy that includes the following provisions:
    - a. That a school shall not exclude a pupil who tested positive for HIV from attending school or school functions or from participating in school activities solely due to HIV infection;
    - b. That school district personnel who are informed that a pupil tested positive for HIV shall keep the information confidential; and
    - c. That the school district shall provide HIV-education programs to pupils, parents or guardians of pupils, and school district personnel through age-appropriate curricula, workshops, or in-service training sessions.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final expedited rulemaking at 24 A.A.R. 2761, effective September 11, 2018 (Supp. 18-3).

**ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION****R9-6-1101. Definitions**

In this Article, unless otherwise specified:

1. "Primary syphilis" means the initial stage of syphilis infection characterized by the appearance of one or more open sores in the genital area, anus, or mouth of an infected individual.
2. "Secondary syphilis" means the stage of syphilis infection occurring after primary syphilis and characterized by a rash that does not itch, fever, swollen lymph glands, and fatigue in an infected individual.
3. "Sexually transmitted diseases" means the same as in A.R.S. § 13-1415.
4. "STD" means a sexually transmitted disease or other disease that may be transmitted through sexual contact.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**R9-6-1102. Health Care Provider Requirements**

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an STD, the

ordering health care provider or the ordering health care provider's designee shall:

1. Describe the test results to the subject;
2. Provide or arrange for the subject to receive the following information about the STD for which the subject was tested:
  - a. A description of the disease or syndrome caused by the STD, including its symptoms;
  - b. Treatment options for the STD and where treatment may be obtained;
  - c. A description of how the STD is transmitted to others;
  - d. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated;
  - e. That it is necessary for the subject to notify individuals who may have been infected by the subject that the individuals need to be tested for the STD;
  - f. The availability of assistance from local health agencies or other resources; and
  - g. The confidential nature of the subject's test results;
3. Report the information required in R9-6-202 to a local health agency; and
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to R9-6-381.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

**R9-6-1103. Local Health Agency Requirements**

- A.** For each STD case, a local health agency shall:
1. Comply with the requirements in:
    - a. R9-6-317(A)(1) and (2) for each chancroid case reported to the local health agency, and
    - b. R9-6-381(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
  2. Offer or arrange for treatment for each STD case that seeks treatment from the local health agency for symptoms of:
    - a. Chancroid,
    - b. Chlamydia infection,
    - c. Gonorrhea, or
    - d. Syphilis;
  3. Provide information about the following to each STD case that seeks treatment from the local health agency:
    - a. A description of the disease or syndrome caused by the applicable STD, including its symptoms;
    - b. Treatment options for the applicable STD;
    - c. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated; and
    - d. The confidential nature of the STD case's test results; and
  4. Inform the STD case that:
    - a. A chlamydia or gonorrhea case must notify each individual, with whom the chlamydia or gonorrhea case has had sexual contact within 60 days preceding the onset of chlamydia or gonorrhea symptoms up to the date the chlamydia or gonorrhea case began treatment for chlamydia or gonorrhea infec-

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- tion, of the need for the individual to be tested for chlamydia or gonorrhea; and
- b. The Department or local health agency will notify, as specified in subsection (B), each contact named by a chancroid or syphilis case.
- B.** For each contact named by a chancroid or syphilis case, the Department or a local health agency shall:
1. Notify the contact named by a chancroid or syphilis case of the contact's exposure to chancroid or syphilis and of the need for the contact to be tested for:
    - a. Chancroid, if the chancroid case has had sexual contact with the contact within 10 days preceding the onset of chancroid symptoms up to the date the chancroid case began treatment for chancroid infection; or
    - b. Syphilis, if the syphilis case has had sexual contact with the contact within:
      - i. 90 days preceding the onset of symptoms of primary syphilis up to the date the syphilis case began treatment for primary syphilis infection;
      - ii. Six months preceding the onset of symptoms of secondary syphilis up to the date the syphilis case began treatment for secondary syphilis infection; or
      - iii. 12 months preceding the date the syphilis case was diagnosed with syphilis if the syphilis case cannot identify when symptoms of primary or secondary syphilis began;
  2. Offer or arrange for each contact named by a chancroid or syphilis case to receive testing and, if appropriate, treatment for chancroid or syphilis; and
  3. Provide information to each contact named by a chancroid or syphilis case about:
    - a. The characteristics of the applicable STD,
    - b. The syndrome caused by the applicable STD,
    - c. Measures to reduce the likelihood of transmitting the applicable STD, and
    - d. The confidential nature of the contact's test results.
- C.** For each contact of a chlamydia or gonorrhea case who seeks treatment from a local health agency for symptoms of chlamydia or gonorrhea, the local health agency shall:
1. Offer or arrange for treatment for chlamydia or gonorrhea;
  2. Provide information to each contact of a chlamydia or gonorrhea case about:
    - a. The characteristics of the applicable STD,
    - b. The syndrome caused by the applicable STD,
    - c. Measures to reduce the likelihood of transmitting the applicable STD, and
    - d. The confidential nature of the contact's test results.
- Historical Note**
- New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).
- R9-6-1104. Court-ordered STD-related Testing**
- A.** A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
  - B.** A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
  - C.** When a court orders a test under A.R.S. § 13-1415 to detect a sexually-transmitted disease, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
    1. A copy of the court order, including an identifying number associated with the court order;
    2. The name and address of the victim; and
    3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.
  - D.** A person who tests a specimen of blood or another body fluid from a subject to detect a sexually-transmitted disease as authorized by a court order issued under A.R.S. § 13-1415 shall:
    1. Be a certified laboratory, as defined in A.R.S. § 36-451;
    2. Use a test approved by the U.S. Food and Drug Administration for use in STD-related testing; and
    3. Report the test results for each subject to the submitting entity within five working days after obtaining the test results.
  - E.** A submitting entity that receives the results of a test to detect a sexually-transmitted disease that was performed as a result of a court order issued under A.R.S. § 13-1415 shall:
    1. Notify the Department within five working days after receiving the results of the test to detect a sexually-transmitted disease;
    2. Provide to the Department:
      - a. A written copy of the court order,
      - b. A written copy of the results of the test to detect a sexually-transmitted disease, and
      - c. The name and telephone number of the submitting entity or submitting entity's designee; and
    3. Either:
      - a. Comply with the requirements in:
        - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
        - ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
      - b. Provide to the Department or the local health agency in whose designated service area the subject is living:
        - i. The name and address of the subject;
        - ii. A written copy of the results of the test to detect a sexually-transmitted disease, if not provided as specified in subsection (E)(2)(b); and
        - iii. Notice that the submitting entity did not provide notification as specified in subsection (E)(3)(a).
  - F.** If the Department or a local health agency is notified by a submitting entity as specified in subsection (E)(3)(b), the Department or local health agency shall comply with the requirements in:
    1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
    2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
  - G.** When the Department receives the results of a test to detect a sexually-transmitted disease that was performed for a subject as a result of a court order issued under A.R.S. § 13-1415, the Department shall:
    1. Provide to the victim:

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- a. A description of the results of the test to detect the sexually-transmitted disease,
  - b. The information specified in R9-6-802(D), and
  - c. A written copy of the test results for the sexually-transmitted disease; or
2. Provide to the local health agency in whose designated service area the victim is living:
    - a. The name and address of the victim,
    - b. A written copy of the results of the test to detect the sexually-transmitted disease, and
    - c. Notice that the Department did not provide notification as specified in subsection (G)(1).
- H.** If a local health agency is notified by the Department as specified in subsection (G)(2), the local health agency shall:
1. Provide to the victim:
    - a. A description of the results of the test to detect the sexually-transmitted disease;
    - b. The information specified in R9-6-802(D); and
    - c. A written copy of the test results for the sexually-transmitted disease; or
  2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect the sexually-transmitted disease.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

**ARTICLE 12. TUBERCULOSIS CONTROL****R9-6-1201. Definitions**

In addition to the definitions in A.R.S. § 36-711, the following definitions apply in this Article, unless otherwise specified:

1. "Inmate" means an individual who is incarcerated in a correctional facility.
  2. "Latent tuberculosis infection" means the presence of *Mycobacterium tuberculosis*, as evidenced by a positive result from an approved test for tuberculosis, in an individual who:
    - a. Has no symptoms of active tuberculosis,
    - b. Has no clinical signs of tuberculosis other than the positive result from the approved test for tuberculosis, and
    - c. Is not infectious to others.
  3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:
    - a. A productive cough that has lasted for at least three weeks;
    - b. Coughing up blood; or
    - c. A combination of at least three of the following:
      - i. Fever,
      - ii. Chills,
      - iii. Night sweats,
      - iv. Fatigue,
      - v. Chest pain, and
      - vi. Weight loss.
2. According to R9-6-206:
    - a. After receiving information according to R9-6-202; and
    - b. After conducting an epidemiologic investigation of a case, suspect case, or contact;
  3. Within 30 days after receiving the information needed to complete an initial summary for a case of active tuberculosis, in a Department-provided format, containing:
    - a. Demographic information about the case,
    - b. Information specific to the case's diagnosis of active tuberculosis,
    - c. Information about the case's risk factors for tuberculosis, and
    - d. Information specific to the treatment being provided to the case;
  4. As applicable, within 30 days after receiving the information needed to complete a summary of laboratory test results for a case of active tuberculosis, in a Department-provided format, including:
    - a. The results from the analysis of the agent causing tuberculosis in the case, and
    - b. The drug sensitivity pattern of the agent causing tuberculosis in the case;
  5. Within 30 days after determining the final disposition of a case or, except for a case still receiving treatment, two years after the case's initial diagnosis of active tuberculosis, whichever is earlier, in a Department-provided format, including:
    - a. Whether the case:
      - i. Completed treatment, including confirmation of the case's freedom from active tuberculosis;
      - ii. Refused treatment;
      - iii. Was lost to follow-up before completing treatment;
      - iv. Left the jurisdiction of the local health agency before completing treatment; or
      - v. Died;
    - b. If applicable, the method by which the local health agency has knowledge of completion of treatment;
    - c. If the period of treatment was longer than 12 months, the reason for the extended treatment; and
    - d. A description of each course or method of treatment provided to the case, including the date each treatment was initiated.

**Historical Note**

Section R9-6-1202 renumbered from R9-6-602 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3). Amended by final expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019 (Supp. 19-1).

**R9-6-1203. Tuberculosis Control in Correctional Facilities**

- A.** An administrator of a correctional facility shall ensure that:
1. Each new inmate in the correctional facility undergoes a symptom screening for tuberculosis while processing into the correctional facility;
  2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:
    - a. Is immediately:
      - i. Placed in airborne infection isolation, or
      - ii. Required to wear a surgical mask and retained in an environment where exposure to the gen-

**Historical Note**

Section R9-6-1201 renumbered from R9-6-601 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019 (Supp. 19-1).

**R9-6-1202. Local Health Agency Reporting Requirements**

A local health agency shall report to the Department:

1. Regarding each individual in its jurisdiction who:
  - a. Has been diagnosed with active tuberculosis,

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- eral inmate population is minimal and the inmate can be observed at all times to be wearing the mask;
- b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:
    - i. Given a medical evaluation for active tuberculosis, or
    - ii. Transported to a health care institution to be placed in airborne infection isolation; and
  - c. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).
3. Except as provided in subsection (A)(5), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;
  4. Except as provided in subsection (A)(8), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical evaluation, within 14 days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;
  5. Each new inmate who is HIV-positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;
  6. Each inmate who had a negative result from an approved test for tuberculosis when tested according to subsection (A)(3) during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;
  7. Each inmate who has a positive result on a repeat approved test for tuberculosis after a negative result on a previous approved test for tuberculosis is given a chest x-ray and a medical evaluation within 14 days after the date of the positive result on the repeat approved test to determine whether the inmate has active tuberculosis;
  8. An inmate is not required to have another chest x-ray unless the inmate has symptoms suggestive of tuberculosis if the inmate has had a documented negative chest x-ray;
  9. Each inmate with active tuberculosis is:
    - a. Provided medical treatment that meets accepted standards of medical practice, and
    - b. Placed in airborne infection isolation until no longer infectious; and
  10. All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.
- B.** The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.
  - C.** An administrator of a correctional facility, either personally or through a representative, shall:
    1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;
    2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case;
    3. Provide to a local health agency, within three working days after the local health agency's request, the information required by the local health agency to comply with R9-6-1202(5); and
    4. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

**Historical Note**

Section R9-6-1203 renumbered from R9-6-603 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019 (Supp. 19-1).

**R9-6-1204. Standards of Medical Care**

- A.** Unless a health care provider believes, based on the health care provider's professional judgment, that deviation is medically necessary, a health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in the Official American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis (October 2016), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 25 Broadway, New York, NY 10004 or at [www.atsjournals.org](http://www.atsjournals.org).
- B.** If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis specified in subsection (A), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation.
- C.** If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis specified in subsection (A) is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).

**Historical Note**

Section R9-6-1204 renumbered from R9-6-604 by final rulemaking at 13 A.A.R. 4106, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019 (Supp. 19-1).

**ARTICLE 13. IMMUNIZATIONS OR VACCINES REQUIRING PRESCRIPTIONS FOR PHARMACIST ADMINISTRATION****R9-6-1301. Immunizations or Vaccines Requiring a Prescription Order for Pharmacist Administration**

- A.** In this Section, unless otherwise specified, the following definitions apply:
  1. "Certified pharmacist" means an individual licensed under A.R.S. Title 32, Chapter 18, who is authorized under A.A.C. R4-23-411 to administer immunizations or vaccines.
  2. "Immunization" has the same meaning as in A.R.S. § 36-671.
  3. "Prescription order" has the same meaning as in A.R.S. § 32-1901.
- B.** The following immunizations or vaccines require a prescription order before the immunization or vaccine may be administered under A.A.C. R4-23-411 by a certified pharmacist:
  1. Japanese Encephalitis vaccine,
  2. Rabies vaccine,

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3. Typhoid vaccines,
4. Yellow fever vaccine, and
5. Cholera vaccine.

**Historical Note**

New Section made by exempt rulemaking at 15 A.A.R. 1793, effective October 5, 2009 (Supp. 09-4). Amended by exempt rulemaking at 23 A.A.R. 3360, effective November 14, 2017 (Supp. 17-4).

## Statutory Authority

13-1210. Assaults on hospital employees, public safety employees or volunteers and state hospital employees; disease testing; petition; hearing; notice; definitions

A. A hospital employee, a public safety employee or volunteer or the employing agency, officer or entity may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and one of the following applies:

1. The person is charged in any criminal complaint and the complaint alleges that the person interfered with the official duties of the hospital employee or the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the hospital employee or the public safety employee or volunteer.
2. There is probable cause to believe that the person interfered with the official duties of the hospital employee or the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the hospital employee or public safety employee or volunteer and that the person is deceased.
3. There is probable cause to believe that the person bit, scratched, spat or transferred blood or other bodily fluid on or through the skin or membranes of a hospital employee or a public safety employee or volunteer who was performing an official duty.
4. The person is arrested, charged or in custody and the hospital employee or the public safety employee or volunteer alleges, by affidavit, that the person interfered with the official duties of the hospital employee or the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the hospital employee or the public safety employee or volunteer.
5. The public safety employee or volunteer, as part of the employee's or volunteer's official duties, was rendering aid to the person as a result of a medical emergency and was exposed to blood or other bodily fluids on or through the skin or membranes.
6. The public safety employee or volunteer, as part of the employee's or volunteer's official duties, was rendering aid to the person as a result of a medical emergency and was exposed to blood or other bodily fluids on or through the skin or membranes, and the person is deceased.

B. An employee of the Arizona state hospital or the employing agency may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and the person is a patient who is confined to the Arizona state hospital and who is alleged to have interfered with the official duties of the Arizona state hospital employee by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the Arizona state hospital employee.

C. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluids occurred between the person and the hospital employee, the public safety employee or volunteer or the Arizona state hospital employee, the court shall order that either:

1. The person provide two specimens of blood for testing.
2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

D. Notwithstanding subsection C, paragraph 2 of this section, on written notice from the agency, officer or entity employing the hospital employee or the public safety employee or volunteer, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency, officer or entity for testing only after the court issues its order pursuant to subsection C, paragraph 2 of this section. If the court does not

## Statutory Authority

issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

E. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, to the hospital employee, the public safety employee or volunteer or the Arizona state hospital employee named in the petition and to the employee's or volunteer's employing agency, officer or entity and, if the person tested is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

F. Section 36-665 does not apply to this section.

G. For the purposes of this section:

1. "Arizona state hospital" includes the Arizona community protection and treatment center.
2. "Arizona state hospital employee" means an employee of the Arizona state hospital who has direct patient contact.
3. "Hospital employee" means a private hospital employee or volunteer or a person who is authorized to perform official duties at a private hospital while performing those authorized duties.
4. "Private hospital" means a hospital that is not maintained and operated by this state or any political subdivision of this state.
5. "Private prison security officer" means a security officer who is employed by a private contractor that contracts with a governmental entity to provide detention or incarceration facility services for offenders.
6. "Public safety employee or volunteer" means a law enforcement officer, any employee, contractor or volunteer of a state or local law enforcement agency or correctional facility, a probation officer, a surveillance officer, an adult or juvenile correctional service officer, a detention officer, a private prison security officer, a firefighter, an emergency medical technician or any other person who is authorized to perform official duties or be present within a correctional facility.

## Statutory Authority

### 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.

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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

## Statutory Authority

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,

## Statutory Authority

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

## Statutory Authority

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.

## **Statutory Authority**

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.

# Statutory Authority

House Engrossed

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

## CHAPTER 97

# HOUSE BILL 2041

AN ACT

AMENDING SECTION 13-1210, ARIZONA REVISED STATUTES; RELATING TO HOSPITAL ASSAULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-1210, Arizona Revised Statutes, is amended to read:

**13-1210. Assaults on hospital employees, public safety employees or volunteers and state hospital employees; disease testing; petition; hearing; notice; definitions**

A. A **HOSPITAL EMPLOYEE**, A public safety employee or volunteer or the employing agency, officer or entity may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and one of the following applies:

1. The person is charged in any criminal complaint and the complaint alleges that the person interfered with the official duties of the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer.

2. There is probable cause to believe that the person interfered with the official duties of the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the **HOSPITAL EMPLOYEE OR** public safety employee or volunteer and that the person is deceased.

3. There is probable cause to believe that the person bit, scratched, spat or transferred blood or other bodily fluid on or through the skin or membranes of a **HOSPITAL EMPLOYEE OR A** public safety employee or volunteer who was performing an official duty.

4. The person is arrested, charged or in custody and the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer alleges, by affidavit, that the person interfered with the official duties of the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer by biting, scratching, spitting or

# Statutory Authority

transferring blood or other bodily fluids on or through the skin or membranes of the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer.

B. An employee of the Arizona state hospital or the employing agency may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and the person is a patient who is confined to the Arizona state hospital and who is alleged to have interfered with the official duties of the Arizona state hospital employee by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the Arizona state hospital employee.

C. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluids occurred between the person and the **HOSPITAL EMPLOYEE, THE** public safety employee or volunteer or the Arizona state hospital employee, the court shall order that either:

1. The person provide two specimens of blood for testing.
2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

D. Notwithstanding subsection C, paragraph 2 of this section, on written notice from the agency, officer or entity employing the **HOSPITAL EMPLOYEE OR THE** public safety employee or volunteer, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body.♦ The medical examiner shall release the specimen to the employing agency, officer or entity for testing only after the court issues its order pursuant to subsection C, paragraph 2 of this section.♦ If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

E. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, to the **HOSPITAL EMPLOYEE, THE** public safety employee or volunteer or the Arizona state hospital employee named in the petition and to the employee's or volunteer's employing agency, officer or entity and, if the person tested is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

F. Section 36-665 does not apply to this section.

G. For the purposes of this section:

1. "Arizona state hospital" includes the Arizona community protection and treatment center.

2. "Arizona state hospital employee" means an employee of the Arizona state hospital who has direct patient contact.

3. **"HOSPITAL EMPLOYEE" MEANS A PRIVATE HOSPITAL EMPLOYEE OR VOLUNTEER OR A PERSON WHO IS AUTHORIZED TO PERFORM OFFICIAL DUTIES AT A PRIVATE HOSPITAL WHILE PERFORMING THOSE AUTHORIZED DUTIES.**

4. **"PRIVATE HOSPITAL" MEANS A HOSPITAL THAT IS NOT MAINTAINED AND OPERATED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.**

~~3-~~ 5. "Private prison security officer" means a security officer who is employed by a private contractor that contracts with a governmental entity to provide detention or incarceration facility services for offenders.

~~4-~~ 6. "Public safety employee or volunteer" means a law enforcement officer, any employee, contractor or volunteer of a state or local law enforcement agency or correctional facility, a probation officer, a surveillance officer, an adult or juvenile correctional service officer, a detention officer, a private prison security officer, a firefighter, an emergency medical technician or any other person who is authorized to perform official duties or be present within a correctional facility.

## Sec. 2. Legislative intent; assault reporting

The legislature intends to encourage private hospitals to keep and report information on the number of assaults that occur against private hospital employees and volunteers each year and the circumstances of those assaults.♦ The data obtained must be provided to public policy researchers with a mission of establishing a safer working environment for hospital staff, volunteers and visitors. The legislature intends that this information will assist in the study of ways to reduce violence against health care workers and in making recommendations to the legislature on how to reduce the number of assaults and to ensure that assaults on health care workers do not go unreported to law enforcement agencies and prosecutors.

# Statutory Authority

**APPROVED BY THE GOVERNOR APRIL 17, 2019.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2019.**

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**D-2**

**DEPARTMENT OF HEALTH SERVICES (R20-0505)**

Title 9, Chapter 7, Articles 1, 3, 4, 15, and 19, Radiation Control

**Amend:** R9-7-101, R9-7-102, R9-7-302, R9-7-305, R9-7-313, R9-7-318, R9-7-448, R9-7-1507,  
R9-7-1510, R9-7-1514, R9-7-1907, R9-7-1923, R9-7-1927, R9-7-1977



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 6, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-0505)**  
Title 9, Chapter 7, Articles 1, 3, 4, 15, and 19, Radiation Control

**Amend:** R9-7-101, R9-7-102, R9-7-302, R9-7-305, R9-7-313, R9-7-318,  
R9-7-448, R9-7-1507, R9-7-1510, R9-7-1514, R9-7-1907,  
R9-7-1923, R9-7-1927, R9-7-1977

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### Summary:

This Notice of Final Expedited Rulemaking from the Department of Health Services (Department) seeks to amend rules in Title 9, Chapter 7, Articles 1, 3, 4, 15, and 19 relating to Radiation Control. The existing rules were made pursuant to A.R.S. § 30-654(B)(5). Arizona is an "Agreement State" by a Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March 1967, pursuant to A.R.S. § 30-565.

In order to remain in compliance with this Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The U.S. Nuclear Regulatory Commission periodically issues changes, known as "Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that Agreement States must incorporate. Arizona has not yet incorporated some of these RATS IDs into its rules related to radioactive material.

Therefore, the Department is conducting this expedited rulemaking to amend the relevant rules to conform to RATS IDs 2013-2 and 2019-2. The Department also seeks to make other changes specified in RATS IDs 2015-1, 2015-3, and 2019-1, based on a compatibility review of Arizona rules and federal regulations, as well as changes to reduce the administrative burden of the rules by correcting references and making the rules easier to understand.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on December 16, 2019.

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

Yes. In its cover letter, the Department states that this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The Department further states that the expedited rulemaking adopts regulations of the U.S. Nuclear Regulatory Commission, relating to the control of radioactive material, in a manner that is consistent with federal regulations and makes clarifying and technical changes to the rules to make them easier to understand.

Upon review, Council staff agrees with the Department that this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3), (4), and (6).

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?**

Not applicable.

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. As the Department states in its Notice of Final Expedited Rulemaking, the Department only made minor technical changes between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking. These changes do not result in rules that are “substantially different” pursuant to 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. The Department states that the rules are not more stringent than corresponding federal law. The Department cites numerous provisions of the Code of Federal Regulations (CFR) that are applicable to these rules.

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

Yes. Pursuant to A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources.

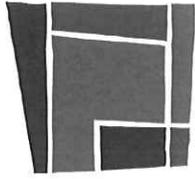
The rules make reference to both general and specific permits. The general permit is applicable to certain levels of radioactive material, and specific permits are issued for quantities and uses that are specific to the user and their training or scope of practice. Thus, where applicable, the Department issues general permits and therefore complies with A.R.S. § 41-1037.

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 any study in conducting this expedited rulemaking.

9. **Conclusion**

In this expedited rulemaking, the Department seeks to amend these rules to conform to applicable federal regulations, pursuant to an Agreement between the state of Arizona and the federal government. In addition, the Department seeks to make other clarifying and technical changes to the rules. This rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3), (4), and (6). If approved, this expedited rulemaking would be effective immediately upon the Department filing its Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

March 20, 2020

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

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

RE: Department of Health Services, 9 A.A.C. 7, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: March 20, 2020
  2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts regulations of the U.S. Nuclear Regulatory Commission, related to the control of radioactive material, in a manner that is consistent with federal regulations and the Agreement negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March 1967 under A.R.S. § 30-656. In addition, the rulemaking makes other changes to reduce the administrative burden of the rules by clarifying existing language in the rules, correcting cross-references, and making the rules easier to understand. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3), (4), and (6).
  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 for 9 A.A.C. 7 does not relate to a five-year-review report.
- The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.
4. A list of all items enclosed:
    - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
    - b. Materials incorporated by reference
    - c. Statutory authority

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

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov).

Sincerely,

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

Stephanie Elzenga  
Director's Designee

RL:rms

Enclosures

**NOTICE OF FINAL EXPEDITED RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 7. RADIATION CONTROL**

**PREAMBLE**

- | <b><u>1.</u></b> | <b><u>Article, Part, of Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|------------------|--|---------------------------------|
|                  | R9-7-101   | Amend                           |
|                  | R9-7-102   | Amend                           |
|                  | R9-7-302   | Amend                           |
|                  | R9-7-305   | Amend                           |
|                  | R9-7-313   | Amend                           |
|                  | R9-7-318   | Amend                           |
|                  | R9-7-448   | Amend                           |
|                  | R9-7-1507  | Amend                           |
|                  | R9-7-1510  | Amend                           |
|                  | R9-7-1514  | Amend                           |
|                  | R9-7-1907  | Amend                           |
|                  | R9-7-1923  | Amend                           |
|                  | R9-7-1927  | Amend                           |
|                  | R9-7-1977  | 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. §§ 30-654(B)(5) and 36-136(G)  
Implementing Statutes: A.R.S. §§ 30-654, 30-656, 30-657, 30-671 through 30-672.01, 30-681 through 30-689, and 30-721
- 3.** **The effective date of the rules:**  
The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4.** **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**  
Notice of Rulemaking Docket Opening: 26 A.A.R. 355, February 28, 2020  
Notice of Proposed Expedited Rulemaking: 26 A.A.R. 431, March 13, 2020
- 5.** **The agency’s contact person who can answer questions about the rulemaking:**

Name: Brian D. Goretzki, Chief, Bureau of Radiation Control  
Address: Arizona Department of Health Services  
Public Health Licensing Services  
4814 South 40th Street  
Phoenix, AZ 85040  
Telephone: (602) 255-4840  
Fax: (602) 437-0705  
E-mail: Brian.Goretzki@azdhs.gov

or

Name: Stephanie Elzenga, Acting Office Chief  
Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007  
Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: Stephanie.Elzenga@azdhs.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 rulemaking:**

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. Arizona is an Agreement State by the Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The U.S. Nuclear Regulatory Commission periodically issues changes, denoted as Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that are required to be incorporated by Agreement States. Several RATS IDs have not yet been incorporated into Arizona's rules related to radioactive material. The Department is revising the rules in A.A.C. Title 9, Chapter 7, by expedited rulemaking, to make changes to conform to the RATS IDs 2013-2 and 2019-2. The Department also plans to make other changes specified in RATS IDs 2015-1, 2015-3, and 2019-1, based on a compatibility review of Arizona rules and federal regulations, as well as changes to reduce the administrative burden of the rules by

correcting references and making the rules easier to understand. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either adopts or incorporates by reference, without material change, federal statutes and regulations, or clarifies language of a rule without changing its effect.

**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 did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, the only changes made to the rulemaking were to correct the revision dates for incorporations by reference, make related clarifying text changes, and correct the URLs at which documents can be accessed. The dates currently specified in the rules are for the last annual review of the cited regulation at the time of the rulemaking that related to the subsection containing the incorporation, rather than the date that changes were actually last made to the regulation.

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

The Department received no written or oral comments about the rulemaking.

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

**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:**

According to A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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

The rules are not more stringent than federal law. Applicable federal law includes: 10 CFR 35.204; 10 CFR 37.7; 10 CFR 37.23; 10 CFR 37.25; 10 CFR 37.27; 10 CFR 37.43; 10 CFR 35.50; 10 CFR 35.59; 10 CFR 35.433; 10 CFR 35.3204; 10 CFR 37.7; 10 CFR 40.3; 10 CFR 40.4; 10 CFR 40.13; 10 CFR 40.22; 10 CFR 40.54; 10 CFR 40.55; 10 CFR 70.25; 10 CFR 70.50; 10 CFR 71; 10 CFR 73; 10 CFR 110; 21 CFR 1010.2; 21 CFR 1020.40; 28 CFR 16.30 through 16.34; 40 CFR 190; 40 CFR 191; 49 CFR 107; and 49 CFR 171 through 180.

**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:**

- In R9-7-101, the Agreement between Arizona and the U.S. Nuclear Regulatory Commission.
- In R9-7-102: 21 CFR 1020.40, in the definition of “certifiable cabinet x-ray system”; 21 CFR 1010.2 and 21 CFR 1020.40, in the definition of “certified cabinet x-ray system”; 40 CFR 190 and 191, in the definition of “generally applicable environmental radiation standards”; 49 CFR 173.403, in the definition of “nuclear waste”; 10 CFR 35.50(a) and (c)(1) and 10 CFR 35.59, in the definition of “Radiation Safety Officer”; and 49 CFR 107, and 171 through 180, in the definition of “regulations of the U.S Department of Transportation.”
- In R9-7-1510: 49 CFR 173.403, in subsection (B)(2)(b); 49 CFR 173 and 178, in subsection (C); 49 CFR 173.403, in subsection (C)(3); 49 CFR 171.23, in subsection (D)(1); and 49 CFR 173.443, in subsection (E)(9).
- In R9-7-1927: 10 CFR 73, in subsection (A)(4); and 10 CFR 37.7, in subsection (C)(1).

While the citations to 10 CFR 71, which contains the NRC requirements governing packaging and transportation of radioactive materials, in the following Sections are remaining in the rules, the incorporations by reference to a specific, dated version are being removed as unnecessary because a regulated entity, according to the Agreement, must comply with the current version of the NRC requirements regardless of the date of the document in the rules:

- R9-7-102, definitions of “A1,” “A2,” “Certificate of Compliance,” “Major processor” and “Special form radioactive materials”
- R9-7-1507(A)
- R9-7-1510(B)(2)(a), (B)(3)(a) and (b), (B)(5), (C)(2)(b), (C)(6)(c), (D)(3)(b)(ii), (E)(8), (E)(10), and (E)(11)

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

The rule was not previously made as an emergency rule.

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

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 7. RADIATION CONTROL**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R9-7-101. Scope and Incorporated Materials
- R9-7-102. Definitions

**ARTICLE 3. RADIOACTIVE MATERIAL LICENSING**

Section

- R9-7-302. Source Material; Exemptions
- R9-7-305. General Licenses – Source Material
- R9-7-313. Specific Terms and Conditions
- R9-7-318. Transfer of Radioactive Material

**ARTICLE 4. STANDARDS FOR PROTECTION AGAINST IONIZING RADIATION**

Section

- R9-7-448. Additional Reporting

**ARTICLE 15. TRANSPORTATION**

Section

- R9-7-1507. Packaging Quality Assurance
- R9-7-1510. Packaging
- R9-7-1514. ~~Reserved~~ Records

**ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2  
QUANTITIES OF RADIOACTIVE MATERIAL**

Section

- R9-7-1907. Communications
- R9-7-1923. Access Authorization Program Requirements
- R9-7-1927. Requirements for Criminal History Records Checks of Individuals Granted Unescorted  
Access to Category 1 or Category 2 Quantities of Radioactive Material
- R9-7-1977. Advance Notification of Shipment of Category 1 Quantities of Radioactive Material

## ARTICLE 1. GENERAL PROVISIONS

### R9-7-101. Scope and Incorporated Materials

- A. Except as otherwise specifically provided, this Chapter applies to all persons who receive, possess, use, transfer, own, or acquire any source of radiation.
- B. This Chapter does not apply to any person that is subject to regulation by the Nuclear Regulatory Commission.
- C. State control of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission, signed March 30, 1967 and incorporated by reference. This incorporated material contains no later editions or amendments, and together with all other incorporated materials in this Chapter, is available ~~for inspection or copying at the Arizona Department of Health Services, Bureau of Radiation Control, 4814 S. 40th St., Phoenix, AZ 85040~~ on the Arizona Department of Health Services, Bureau of Radiation Control website at <https://www.azdhs.gov/documents/licensing/radiation-regulatory/arizona-agreement.pdf>.
- D. Federal regulations incorporated by reference in this Chapter are available from the U.S. Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and ~~<http://www.gpoaccess.gov/cfr/>~~ <https://www.govinfo.gov/app/collection/CFR>.

### R9-7-102. Definitions

Terms defined in A.R.S. § 30-651 have the same meanings when used in this Chapter, unless the context otherwise requires. Additional subject-specific definitions are used in other Articles.

“A1” means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, ~~revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~

“A2” means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A, ~~revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~

“Absorbed dose” means the energy imparted by ionizing radiation per unit mass of irradiated

material. The units of absorbed dose are the gray (Gy) and the rad.

“Accelerator” means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, “particle accelerator” is an equivalent term.

“Accelerator produced material” means any material made radioactive by irradiating it in a particle accelerator.

“Act” means A.R.S. Title 30, Chapter 4.

“Activity” means the rate of disintegration, transformation, or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

“Adult” means an individual 18 or more years of age.

“Agreement State” means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689). “Nonagreement State” means any other state.

“Airborne radioactive material” means any radioactive material dispersed in the air in the form of aerosols, dusts, fumes, mists, vapors, or gases.

“Airborne radioactivity area” means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

In excess of the derived air concentrations (DACs) specified in Appendix B, Table I of Article 4 of these rules; or

That an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

“ALARA” means as low as is reasonably achievable, making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

“Analytical x-ray equipment” means equipment used for x-ray diffraction or x-ray-induced fluorescence analysis.

“Analytical x-ray system” means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

“Annual” means done or performed yearly. For purposes of Chapter 1, any required activity done or performed within plus or minus two weeks of the annual due date is considered done or performed in a timely manner.

“Approved individual” means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with subpart B of this part and who has completed the training required by 10 CFR 37.43(c).

“Associate Radiation Safety Officer” means an individual who:

Meets the requirements in 10 CFR 35.50 and 10 CFR 35.59; and

Is currently identified as an Associate Radiation Safety Officer for the types of use of byproduct material for which the individual has been assigned duties and tasks by the Radiation Safety Officer on:

A specific medical use license issued by the Commission or an Agreement State;

or

A medical use permit issued by a Commission master material licensee.

“Authorized medical physicist” means an individual who meets the requirements in R9-7-711; or is identified as an authorized medical physicist or teletherapy physicist on:

A specific medical use license issued by the Department, the NRC, or another Agreement State;

A medical use permit issued by a NRC master material licensee;

A permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee; or

A permit issued by a NRC master material license broad scope medical use permittee.

“Authorized nuclear pharmacist” means a pharmacist who meets the requirements in R9-7-712; or is:

Identified as an authorized nuclear pharmacist on a specific license issued by the Department, the NRC, or another Agreement State that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the

practice of nuclear pharmacy; or

Identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

Designated as an authorized nuclear pharmacist in accordance with R9-7-311(G).

“Authorized user” means a physician, dentist, or podiatrist who meets the requirements in R9-7-719, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; or is identified as an authorized user on:

The Department, NRC, or another Agreement State license that authorizes the medical use of radioactive material;

A permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

A permit issued by the Department, the NRC, or another Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

A permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

“Background investigation” means an assessment of an individual’s prior actions and experience conducted by a licensee or applicant, to support the determination of the individual’s trustworthiness and reliability in accordance with 10 CFR 37.25.

“Background radiation” means radiation from cosmic sources; not technologically enhanced naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of a licensee. “Background radiation” does not include sources of radiation regulated by the Department.

“Becquerel” (Bq) means the International System (SI) unit for activity and is equal to 1 disintegration per second (dps or tps).

“Bioassay” means the determination of kinds, quantities, or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, “radiobioassay” is an equivalent term.

“Brachytherapy” means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary or interstitial application.

“Byproduct material” means:

Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute “byproduct material” within this definition;

Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or any material that, has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and; before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

“Calendar quarter” means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining calendar quarters for purposes of this Chapter except at the beginning of a calendar year.

“Calibration” means the determination of:

The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

The strength of a source of radiation relative to a standard.

“Carrier” means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

“Certifiable cabinet x-ray system” means an existing uncertified x-ray system that meets or has been modified to meet the certification requirements specified in 21 CFR 1020.40, revised April 1, ~~2013~~ 2019, incorporated by reference, and available under R9-7-101. This incorporated

material contains no future editions or amendments.

“Certificate holder” means a person who has been issued a certificate of compliance or other package approval by the Department or NRC.

“Certificate of Compliance” (CoC) means the certificate issued by the NRC under 10 CFR 71, Subpart D, (~~Revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~), which authorizes the design of a package for the transportation of radioactive material.

“Certified cabinet x-ray system” means an x-ray system that has been certified in accordance with 21 CFR 1010.2, as being manufactured and assembled on or after April 10, 1975, in accordance with the provisions of 21 CFR 1020.40, both sections revised April 1, ~~2013~~ 2019, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“CFR” means Code of Federal Regulations.

“Chelating agent” means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

“Civil penalty” means the monetary fine which may be imposed on licensees by the Department, pursuant to A.R.S. § 30-687, for violations of the Act, this Chapter, or license conditions.

“Collective dose” means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

“Committed dose equivalent” (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

“Committed effective dose equivalent” (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ( $HE,50 = \sum w_T HT,50$ ).

“Consortium” means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

“Contamination” means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm<sup>2</sup> ( $1 \times 10^{-5}$  μCi/cm<sup>2</sup>) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm<sup>2</sup> ( $1 \times 10^{-6}$  μCi/cm<sup>2</sup>) for all other alpha emitters.

“Fixed contamination” means contamination that cannot be removed from a surface during normal conditions of transport.

“Non-fixed contamination” means contamination that can be removed from a surface during normal conditions of transport.

“Criticality Safety Index (CSI)” means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks or freight containers containing fissile material during transportation. Determination of the criticality safety index is described in 10 CFR 71.22, 10 CFR 71.23, and 10 CFR 71.59. The criticality safety index for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

“Curie” means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7E + 10^{10}$  transformations per second (tps).

“Current license or registration” means a license or registration issued by the Department and for which the licensee has paid the license or registration fee for the current year according to R9-7-1304.

“Deep-dose equivalent” (Hd), which applies to external whole body exposure, is the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm<sup>2</sup>).

“Depleted uranium” means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

“Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

“Dose” is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, “radiation dose” is an equivalent term.

“Dose equivalent” (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

“Dose limits” means the permissible upper bound of radiation doses established in accordance with these rules. For purposes of these rules, “limits” is an equivalent term.

“Dosimeter” (See “Individual monitoring device”)

“Effective dose equivalent” (HE) means the sum of the products of the dose equivalent to each

organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated ( $HE = S \sum wTHT$ ).

“Effluent release” means any disposal or release of radioactive material into the ambient atmosphere, soil, or any surface or subsurface body of water.

“Embryo/fetus” means the developing human organism from conception until the time of birth.

“Enclosed beam x-ray system” means an analytical x-ray system constructed in such a way that access to the interior of the enclosure housing the x-ray source during operation is precluded except through bypassing of interlocks or other safety devices to perform maintenance or servicing.

“Enclosed radiography” means industrial radiography conducted by using cabinet radiography or shielded room radiography.

“Cabinet radiography” means industrial radiography conducted by using an x-ray machine in an enclosure not designed for human admittance and which is so shielded that every location on the exterior meets the conditions for an “unrestricted area.”

“Shielded room radiography” means industrial radiography conducted using an x-ray machine in an enclosure designed for human admittance and which is so shielded that every location of the exterior meets the conditions for an “unrestricted area.”

“Entrance or access point” means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

“Exhibit” for purposes of these rules, is equivalent in meaning to the word “Schedule” as found in previously issued rules, current license conditions, and regulation guide.

“Explosive material” means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

“Exposure” means:

Being subjected to ionizing radiation or radioactive materials.

The quotient of  $dQ$  by  $dm$  where “ $dQ$ ” is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass “ $dm$ ” are completely stopped in air. The special unit of exposure is the roentgen (R).

“Exposure rate” means the exposure per unit of time.

“External dose” means that portion of the dose equivalent received from any source of radiation outside the body.

“Extremity” means the hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

“Fail-safe characteristics” means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

“FDA” means the United States Food and Drug Administration.

“Field radiography” means industrial radiography, utilizing a portable or mobile x-ray system, which is not conducted in a shielded enclosure.

“Field station” means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

“Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities” means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

“Generally applicable environmental radiation standards” means standards issued by the U.S. Environmental Protection Agency (EPA), 40 CFR 190, revised December 1, 1979, and 40 CFR 191, revised ~~July 1, 2013~~ December 20, 1993, incorporated by reference, and available under R9-7-101, under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material. This incorporated material contains no future editions or amendments.

“Gray” (Gy) means the International System (SI) unit of absorbed dose and is equal to 1 joule per kilogram. One gray equals 100 rad.

“Hazardous waste” means those wastes designated as hazardous in A.R.S. § 49-921(5).

“Healing arts” means the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, and veterinary medicine.

“Health care institution” means every place, institution, or building which provides facilities for medical services or other health-related services, not including private clinics or offices which do not provide overnight patient care.

“High radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

“Human use” means the internal or external administration of radiation or radioactive materials to

human beings.

“Impound” means to abate a radiological hazard. Actions which may be taken by the Department in impounding a source of radiation include seizing the source of radiation, controlling access to an area, and preventing a radiation machine from being utilized.

“Indian Tribe” means an Indian or Alaska native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

“Individual” means any human being.

“Individual monitoring” means the assessment of:

Dose equivalent

By the use of individual monitoring devices, or

By the use of survey data, or

Committed effective dose equivalent

By bioassay; or

By determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in Article 4).

“Individual monitoring device” means a device designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this Chapter, “dosimeter” and “personnel dosimeter,” are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, optical stimulation devices, and personal (“lapel”) air sampling devices.

“Individual monitoring equipment” means one or more individual monitoring devices. For purposes of this Chapter, “personnel monitoring equipment” is an equivalent term.

“Industrial radiography” means the examination of the macroscopic structure of materials by non-destructive methods utilizing sources of ionizing radiation.

“Injection tool” means a device used for controlled subsurface injection of radioactive tracer material.

“Inspection” means an examination or observation by a representative of the Department, including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the License or certificate of registration.

“Interlock” means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

“Internal dose” means that portion of the dose equivalent received from radioactive material

taken into the body.

“Irradiate” means to expose to radiation.

“Laser” (light amplification by the stimulated emission of radiation) means any device which can produce or amplify electromagnetic radiation with wavelengths in the range of 180 nanometers to 1 millimeter primarily by the process of controlled stimulated emission.

“Lens dose equivalent” (LDE) means the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm<sup>2</sup>).

“License” means the grant of authority, issued pursuant to Articles 3 and 14 of this Chapter and A.R.S. §§ 30-671, 30-672, and 30-721 et seq., to acquire, possess, transfer, and use sources of radiation. The types of licenses issued by the Department are described in R9-7-1302.

“Licensed material” means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license issued by the Department.

“Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry, or naturopathy in this state.

“Licensee” means any person who is licensed by the Department under this Chapter to acquire, possess, transfer, or use sources of radiation.

“Licensing State” means any state having regulations equivalent to this Chapter relating to, and an effective program for the regulation of, naturally occurring and accelerator-produced radioactive material (NARM).

“Limits” (See “Dose limits”)

“Local components” means those parts of an analytical x-ray system that are struck by x-rays, including radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometer, detectors and shielding but not including power supplies, transformers, amplifiers, readout devices, and control panels.

“Logging supervisor” means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

“Logging tool” means a device used subsurface to perform well logging.

“Lost or missing licensed or registered source of radiation” means licensed or registered source of radiation the location of which is unknown. Included are licensed radioactive material or a registered radiation source that has been shipped but has not reached its planned destination and whose location cannot be readily traced or ascertained in the transportation system.

“Low-level waste” means waste material which contains radioactive nuclides in concentrations or quantities which exceed applicable standards for unrestricted release but does not include:

High-level waste, such as irradiated reactor fuel, liquid waste from reprocessing

irradiated reactor fuel, or solids into which any such liquid waste has been converted;  
Waste material containing transuranic elements with contamination levels greater than 10 nanocuries per gram (370 kilobecquerels per kilogram) of waste material; or  
The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

“Low Specific Activity (LSA) material” means radioactive material with limited specific activity which is nonfissile or is excepted under 10 CFR 71.15, and which satisfies the descriptions and limits set forth in the following section. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. The LSA material must be in one of three groups:

LSA—I.

Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

Radioactive material other than fissile material, for which the A2 value is unlimited; or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with appendix A.

LSA—II.

Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed  $10^{-4}$  A2/g for solids and gases, and  $10^{-5}$  A2/g for liquids.

LSA—III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:

The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days

will not exceed 0.1 A2; and

The estimated average specific activity of the solid, excluding any shielding material, does not exceed  $2 \times 10^{-3}A2/g$ .

“Major processor” means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material or exceeding four times Type B quantities as sealed sources but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4, revised January 1, 2013, incorporated by reference, and available under R9-7-101. ~~This incorporated material contains no future editions or amendments.~~

“Medical dose” means a radiation dose intentionally delivered to an individual for medical examination, diagnosis, or treatment.

“Member of the public” means any individual except when that individual is receiving an occupational dose.

“MeV” means Mega Electron Volt which equals 1 million volts (10<sup>6</sup> eV).

“Mineral logging” means any well logging performed in a borehole drilled for the purpose of exploration for minerals other than oil or gas.

“Minor” means an individual less than 18 years of age.

“Monitoring” means the measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, “radiation monitoring” and “radiation protection monitoring” are equivalent terms.

“Multiplier” means a letter representing a number. The use of a multiplier is based on the code given below:

<i>Prefix</i>	<i>Multiplier Symbol</i>	<i>Value</i>
eka	E	10 <sup>18</sup>
peta	P	10 <sup>15</sup>
tera	T	10 <sup>12</sup>
giga	G	10 <sup>9</sup>
mega	M	10 <sup>6</sup>
kilo	k	10 <sup>3</sup>
milli	m	10 <sup>-3</sup>

micro	u	10 <sup>-6</sup>
nano	n	10 <sup>-9</sup>
pico	p	10 <sup>-12</sup>
femto	f	10 <sup>-15</sup>
atto	a	10 <sup>-18</sup>

“NARM” means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material. This term should not be confused with “NORM” which is defined as naturally occurring radioactive material.

“Normal operating procedures” means the entire set of instructions necessary to accomplish the intended use of the source of radiation. These procedures shall include, but are not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the licensee, and data recording procedures which are related to radiation safety.

“Natural radioactivity” means the radioactivity of naturally occurring radioactive substances.

“NRC” means Nuclear Regulatory Commission, the U.S. Nuclear Regulatory Commission, or its duly authorized representatives.

“NRC Document Control Desk” means the Nuclear Regulatory Document Control Desk. ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

“Nuclear waste” means any highway route controlled quantity (defined in 49 CFR 173.403, revised ~~October 1, 2012~~ January 8, 2015, incorporated by reference, and available under R9-7-101; this incorporated material contains and containing no future editions or amendments) of source, byproduct, or special nuclear material required to be in NRC-approved packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site. Additional requirements associated with transportation of radioactive material can be found in Article 15.

“Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to sources of radiation, whether in the possession of a licensee, registrant, or other person. Occupational dose does not include a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, voluntary participation in a medical research program, or as a member of the public.

“Open beam system” means an analytical x-ray system in which an individual could place some

body part in the primary beam path during normal operation.

“Ophthalmic physicist” means an individual who:

Meets the requirements in 10 CFR 35.433(a)(2) and 10 CFR 35.59; and

Is identified as an ophthalmic physicist on a:

Specific medical use license issued by the Department, the NRC, or another

Agreement State;

Permit issued by a Department, NRC, or another Agreement State broad scope  
medical use licensee;

Medical use permit issued by a NRC master material licensee; or

Permit issued by a NRC master material licensee broad scope medical use  
permittee.

“Package” means the packaging together with its radioactive contents as presented for transport.

“Particle accelerator” (See “Accelerator”)

“Permanent radiographic installation” means a fixed, shielded installation or structure designed or intended for industrial radiography and in which industrial radiography is regularly performed.

“Personnel dosimeter” (See “Individual monitoring device”)

“Personnel monitoring equipment” (See “Individual monitoring device”)

“Personal supervision” means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.

“PET” (See Positron Emission Tomography (PET))

“Pharmacist” means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

“Physician” means an individual licensed pursuant to A.R.S. Title 32, Chapters 13 or 17.

“Positron Emission Tomography (PET)” means an imaging technique using radionuclides to produce high resolution images of the body’s biological functions.

“Positron Emission Tomography radionuclide production facility” means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

“Preceptor” means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, ~~or a Radiation Safety Officer,~~ or an Associate Radiation Safety Officer.

“Primary beam” means radiation which passes through an aperture of the source housing by a

direct path from the x-ray tube or a radioactive source located in the radiation source housing.

“Public dose” means the dose received by a member of the public from radiation from radioactive material released by a licensee or registrant, or exposure to a source of radiation used in a licensed or registered operation. It does not include an occupational dose or a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, or voluntary participation in a medical research program.

“Pyrophoric liquid” means any liquid that ignites spontaneously in dry or moist air at or below 130° F (54.4° C).

“Pyrophoric solid” means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently that it creates a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

“Qualified expert” means an individual certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or having equivalent qualifications that provide the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; or an individual certified in Therapeutic Radiological Physics or X-ray and Radium Physics by the American Board of Radiology, or having equivalent qualifications that provide training and experience in the clinical applications of radiation physics to radiation therapy, to calibrate radiation therapy equipment. The detailed requirements for a particular qualified expert may be provided in the respective Articles of this Chapter. For clarification purposes, a qualified expert is not always an authorized medical physicist; however, an authorized medical physicist is included within the definition of “qualified expert.”

“Quality Factor” (Q) means the modifying factor, listed in Tables I and II of this Article, that is used to derive dose equivalent from absorbed dose.

“Quarter” (See “Calendar quarter”)

“Rad” means the special unit of absorbed dose. One rad equals 100 ergs per gram, or 0.01 gray.

“Radiation” means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, this term is synonymous with ionizing radiation. Equivalent terminology for non-ionizing radiation is defined in Article 14.

“Radiation area” means any area accessible to individuals, in which radiation levels could result

in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

“Radiation dose” (See “Dose”)

“Radiation machine” means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

“Radiation Safety Officer” (RSO) means the individual ~~and~~ who:

~~for~~ For license conditions:

Meets the requirements in 10 CFR 35.50(a) or (c)(1), revised July 16, 2018, and 10 CFR 35.59, (~~revised January 1, 2010~~ March 27, 2006, incorporated by reference, ~~and~~ available under R9-7-10-, ~~This incorporated material contains and containing~~ no future editions or amendments-); or

is Is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC or ~~an~~ another Agreement State; or a medical use permit issued by a NRC master material licensee; or

~~Who, for~~ For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter, and any registration conditions.

“Radiation Safety Officer” (RSO) means the individual ~~and~~ who:

~~for~~ For license conditions:

Meets the requirements of R9-7-407, and for a medical license meets the training requirements of R9-7-710; or

~~Is~~ Is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC, or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

~~Who meets~~ Meets the requirements in R9-7-512 on a specific industrial license issued by the Department, the NRC, or another Agreement State; or an industrial use permit issued by a NRC master material licensee; or

~~Who, for~~ For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

“Radioactive marker” means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

“Radioactive material” means any solid, liquid, or gas which emits radiation spontaneously.

“Radioactivity” means emission of electromagnetic energy or particles or both during the transformation of unstable atomic nuclei.

“Radiographer” means any individual who performs or personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of this Chapter and all conditions of the license or certificate of registration.

“Radiographer’s assistant” means any individual who, under the personal supervision of a radiographer, uses sources of radiation, radiographic exposure devices, related handling tools, or survey instruments in industrial radiography.

“Registrant” means any person who is registered with the Department and is legally obligated to register with the Department pursuant to these rules and the Act.

“Registration” is the process by which a person becomes a registrant pursuant to Article 2 or 14 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Department are described in R9-7-1302.

“Regulations of the U.S. Department of Transportation” means the federal regulations in 49 CFR 107, revised April 19, 2017; 49 CFR 171, revised April 19, 2017; 49 CFR 172, revised November 23, 2015; 49 CFR 173, revised March 6, 2019; 49 CFR 174, revised February 28, 2019; 49 CFR 175, revised October 18, 2018; 49 CFR 176, November 7, 2018; 49 CFR 177, revised September 25, 2013; 49 CFR 178, revised November 7, 2018; 49 CFR 179, revised September 25, 2018; and 49 CFR through 180, revised October 1, 2013 March 30, 2017, incorporated by reference, and available under R9-7-101. ~~This incorporated material contains~~ and containing no future editions or amendments.

“Rem” means the special unit of dose equivalent (see “Dose equivalent”). The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem - 0.01 sievert).

“Research and Development” means exploration, experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and Development does not include the internal or external administration of radiation or radioactive material to human beings.

“Restricted area” means any area where the licensee or registrant controls access for purposes of protecting individuals from exposure to radiation and radioactive material. A restricted area does not include any areas used for residential quarters, although a room or separate rooms in a

residential building may be set apart as a restricted area.

“Roentgen” (R) means the special unit of exposure and is equal to the quantity of x or gamma radiation which causes ionization in air equal to 258 microcoulomb per kilogram (see “Exposure”).

“Safety system” means any device, program, or administrative control designed to ensure radiation safety.

“Sealed source” means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

“Sealed Source and Device Registry” means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for each source or device.

“Shallow dose equivalent” (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm<sup>2</sup>).

“Shielded position” means the location within a radiographic exposure device or storage container which, by manufacturer’s design, is the proper location for storage of the sealed source.

“Sievert” means the SI unit of dose equivalent (see “Dose equivalent”). The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

“Site boundary” means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

“Source changer” means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

“Source holder” means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

“Source material” means:

Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or

Ores that contain by weight 1/20 of 1 percent (0.05 percent) or more of uranium, thorium, or any combination of uranium and thorium.

Source material does not include special nuclear material.

“Source material milling” means any activity that results in the production of byproduct material

as defined by the second subsection under the definition of “Byproduct material.”

“Source of radiation” or “source” means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

“Special form radioactive material” means radioactive material that satisfies all of the following conditions:

It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

It satisfies the test requirements specified in 10 CFR 71.75, ~~revised January 1, 2013, incorporated by reference, available under R9-7-101. This incorporated material contains no future editions or amendments.~~ A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1996), and constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

“Special nuclear material in quantities not sufficient to form a critical mass” means Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; Uranium-233 in quantities not exceeding 200 grams; Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{X \text{ gms U235}}{350} + \frac{Y \text{ gms U233}}{200} + \frac{Z \text{ gms Pu}}{200} \leq 1$$

“Storage area” means any location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, storage container, sealed source, or other source of radiation when it is not in use.

“Storage container” means a device in which sealed sources are transported or stored.

“Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

“Survey” means an evaluation of the production, use, release, disposal, or presence of sources of radiation or any combination thereof under a specific set of conditions to determine actual or potential radiation hazards. Such evaluations include, but are not limited to, tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

“TEDE” (See “Total Effective Dose Equivalent”)

“Teletherapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

“Temporary job site” means any location where sources of radiation are used other than the specified locations listed on a license document. Storage of sources of radiation at a temporary jobsite shall not exceed six months unless the Department has granted an amendment authorizing storage at that jobsite.

“Test” means the process of verifying compliance with an applicable rule, order, or license condition.

“These rules” means all Articles of 9 A.A.C. 7.

“Total Effective Dose Equivalent” (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

“Total Organ Dose Equivalent” (TODE) means the sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose. Determination of TODE is described in R9-7-411.

“Tribal official” means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

“Unrefined and unprocessed ore” means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

“Unrestricted area” means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive material. Any area used for residential quarters is an unrestricted area.

“Uranium - natural, depleted, enriched.”

Natural uranium means uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-

235, and the remainder by weight essentially uranium-238).

Depleted uranium means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

Enriched uranium means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

“U.S. Department of Energy” means the Department of Energy established by P.L. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department of Energy exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components; and transferred to the U.S. Energy Research and Development Administration and to the administrator of that agency under sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974 (P.L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy under Section 301(a) of the Department of Energy Organization Act (P.L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

“Very high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose that exceeds 5 grays (500 rads) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

“Waste” (See “Low-level waste”)

“Waste handling licensees” means persons licensed to receive and store radioactive wastes prior to disposal and persons licensed to dispose of radioactive waste.

“Week” means seven consecutive days starting on Sunday.

“Well-bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

“Well-logging” means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well and adjacent formations.

“Whole body” means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

“Wireline” means an armored cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

“Wireline service operation” means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

“Worker” means any individual engaged in work under a license or registration issued by the

Department and controlled by employment or contract with a licensee or registrant.

“WL” means working level, any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of  $1.3E + 5$  MeV of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

“WLM” means working level month, an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

“Workload” means the degree of use of an x-ray or gamma-ray source per unit time.

“Year” means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

### ARTICLE 3. RADIOACTIVE MATERIAL LICENSING

#### R9-7-302. Source Material; Exemptions

- A. Any person is exempt from this Article to the extent the person receives, possesses, uses, delivers or transfers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 1/20th of 1 percent (0.0005) of the mixture, compound, solution, or alloy.
- B. Any person is exempt from this Article to the extent the person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material, provided that, the person does not refine or process the ore except as authorized in a specific license.
- C. Any person is exempt from the requirements for a license set forth in this Article if the person receives, possesses, uses, or transfers:
1. Any quantities of thorium contained in:
    - a. Incandescent gas mantles;
    - b. Vacuum tubes;
    - c. Welding rods;
    - d. Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;
    - e. Germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting, provided that each lamp does not contain more than 2 grams of thorium;
    - f. Rare earth metals, compounds, mixtures, or products containing not more than 0.25 percent by weight thorium, uranium, or any combination of thorium and uranium; or
    - g. Individual neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium;
  2. Source material contained in the following products:
    - a. Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent source material by weight;
    - b. Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material ~~glass enamel, and glass enamel frit containing not more than 10 percent source material by weight~~, but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass, ~~glass enamel~~ or ceramic used in construction; or

- c. Piezoelectric ceramic containing not more than 2 percent source material by weight;
- 3. Photographic film, negatives, and prints containing uranium or thorium;
- 4. Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subsection does not authorize the chemical, physical, or metallurgical treatment or processing of the finished product or part;
- 5. Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of counterweights, provided that:
  - a. ~~The counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, authorizing distribution by the licensee according to 10 CFR 40;~~
  - b.a. Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: “DEPLETED URANIUM”;
  - e.b. Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: “UNAUTHORIZED ALTERATIONS PROHIBITED”; ~~and~~
  - d.c. The exemption contained in ~~this item~~ subsection (C)(5) does not authorize the chemical, physical, or metallurgical treatment or processing of any counterweight other than repair or restoration of any plating or other covering; and
  - e.d. The requirements specified in ~~subsections (C)(5)(b) and (c) do not apply to~~ (C)(5)(a) and (b) need not be met by counterweights manufactured prior to December 31, 1969; provided, that these counterweights ~~are~~ were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, “CAUTION – RADIOACTIVE MATERIAL – URANIUM;”;
- 6. Natural or depleted uranium metal used as shielding and constituting part of any shipping container; provided that:
  - a. The shipping container is conspicuously and legibly impressed with the legend “CAUTION – RADIOACTIVE SHIELDING – URANIUM,” and
  - b. The uranium metal is encased in mild steel or equally fire resistant metal with minimum wall thickness of 1/8 inch (3.2 mm);

7. Thorium or uranium contained in or on finished optical lenses, provided that each lens or mirror does not contain more than 30 percent of thorium by weight, and that the exemption contained in this item does not authorize either 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that the exemption contained in this Section does not authorize either:
  - a. The shaping, grinding, or polishing of a ~~thoriated lens~~ such lens or mirror or manufacturing processes other than the assembly of a ~~thoriated lens~~ such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or
  - b. The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, spectacles, or the eyepieces of binoculars or other optical instruments;
8. Uranium contained in detector heads of fire detection units, provided that each detector head contains not more than 5 nanocuries (185 Bq) of uranium; or
9. Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:
  - a. The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and
  - b. The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

**D.** No person may initially transfer for sale or distribution a product containing source material to persons exempt under subsection (C), or equivalent regulations of the NRC or another Agreement State, unless authorized by a license issued under R9-7-318 to initially transfer such products for sale or distribution.

**E.** Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under R9-7-318 for distribution only and are exempt from the requirements of Articles 4 and 10 of this Chapter, and R9-7-309(1) and (2).

**D-F.** The exemptions in ~~subsection~~ subsections (C), (D), and (E) do not authorize the manufacture of any of the products described.

#### **R9-7-305. General Licenses – Source Material**

- A. ~~This subsection grants a general license that authorizes commercial and industrial firms; research, educational, and medical institutions; and state and local government agencies to use, and transfer not more than 6.8 kg (15 pounds) of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized under this subsection shall not receive more than 68.2 kg (150 pounds) of source material in one calendar year~~ A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities.
1. No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year.
  2. As applicable:
    - a. No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this subsection unless it is accounted for under the limits of subsection (A)(1);
    - b. No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this subsection;  
or
    - c. No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.
- B. A person who receives, possesses, uses, or transfers source material under a general license granted under subsection (A) is exempt from the provisions of ~~9 A.A.C. 7~~, Article 4 and Article

10 of this Chapter, provided the receipt, possession, use, or transfer is within the terms of the general license, except that such person shall comply with the provisions of R9-7-434 and R9-7-452. This exemption does not apply to any person who is also in possession of source material under a specific license issued under this Article.

C. This subsection grants a general license that authorizes a person to receive acquire, possess, use, or transfer depleted uranium contained in industrial products and devices provided:

1. The depleted uranium is contained in the industrial product or device for the purpose of providing a concentrated mass in a small volume of the product or device;
2. The industrial products or devices have been manufactured or initially transferred in accordance with a specific license governed by R9-7-311(J), or a specific license issued by the ~~U.S. Nuclear Regulatory Commission~~ NRC or an another Agreement State that authorizes manufacture of the products or devices for distribution to persons generally licensed by the ~~U.S. Nuclear Regulatory Commission~~ NRC or an Agreement State; and
3. The person files an ARRA 23 “Registration Certificate -- Use of Depleted Uranium Under General License” with the Department. The person shall provide the information requested on the certificate and listed in Exhibit E. The person shall submit the information within 30 days after first receipt or acquisition of the depleted uranium, returning the completed registration certificate to the Department. The person shall report in writing to the Department any change in information originally submitted to the Department on ARRA 23. The person shall submit the change report within 30 days after the effective date of the described change.

D. A person who receives, acquires, possesses, or uses depleted uranium according to the general license provided under subsection (C) shall:

1. Not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;
2. Not abandon the depleted uranium;
3. Transfer the depleted uranium as prescribed in R9-7-318. If the transferee receives the depleted uranium under a general license established by subsection (C), the transferor shall furnish the transferee with a copy of this ~~Section~~ subsection and a copy of the registration certificate. If the transferee receives the depleted uranium under a general license governed by a regulation of the ~~U.S. Nuclear Regulatory Commission~~ NRC or an another Agreement State that is equivalent to subsection (C), the transferor shall furnish the transferee a copy of the equivalent rule and a copy of the registration certificate,

accompanied by a letter explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission NRC or an Agreement State under requirements substantially similar to those in this Section;

4. Within 30 days of any transfer, report in writing to the Department the name and address of the person receiving the depleted uranium; and
  5. Not export depleted ~~uranium~~ source material except under a license issued by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 110.
- E.** A person who receives, acquires, possesses, uses, or transfers depleted uranium in accordance with a general license granted under subsection (C) is exempt from the requirements of ~~9 A.A.C. 7, Articles 4 and 10 of this Chapter~~ with respect to the depleted uranium covered by that general license.
- F.** Any person who receives, possesses, uses, or transfers source material in accordance with subsection (A) shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Department about such contamination and may consult with the Department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in R9-7-452.
- G.** No person may initially transfer or distribute source material to persons generally licensed under subsection (A)(1) or (2), or equivalent regulations of the NRC or another Agreement State, unless authorized by a specific license issued in accordance with R9-7-318 or equivalent provisions of another Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample.

**R9-7-313. Specific Terms and Conditions**

- A.** Each license issued under this Article is subject to all provisions of A.R.S. Title 30, Chapter 4 and to all rules, regulations, and orders of the Department.
- B.** A licensee shall not transfer, assign, or in any manner dispose of a license issued or granted under this Article or a right to possess or utilize radioactive material granted by any license issued under this Article unless the Department finds that the transfer is consistent with the Department's statutes and rules, and gives its consent in writing. An application for transfer of license must include:
1. The identity, technical and financial qualifications of the proposed transferee; and

2. Financial assurance for decommissioning information required by R9-7-323.
- C.** Each person licensed by the Department under this Article shall confine the use and possession of the material licensed to the locations and purposes authorized in the license.
- D.** Each license issued pursuant to the rules in Articles 3, 5, 7, and 15 of this Chapter shall be deemed to contain the provisions set forth in the Act, whether or not these provisions are expressly set forth in the license.
- E.** The Department may incorporate, in any license issued pursuant to the rules in this Chapter, at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of byproduct material as it deems appropriate or necessary in order to:
1. Promote the common defense and security;
  2. Protect health or to minimize danger to life or property;
  3. Protect restricted data; or
  4. Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and rules thereunder.
- F.** Licensees required to submit emergency plans in accordance with R9-7-322 shall follow the emergency plan approved by the Department. The licensee may change the approved plan without Department approval only if the changes do not reduce the commitment of the plan. The licensee shall furnish the change to the Department and to affected offsite response organizations within six months after the change is made. Proposed changes that reduce, or potentially reduce, the commitment of the approved emergency plan may not be implemented without prior application to and prior approval by the Department.
- G.** Each person licensed under this Section and each general licensee that is required to register under R9-7-306(A)(4)(o) shall notify the Department in writing if the licensee decides to permanently discontinue any or all activities involving materials authorized under the license. A specific licensee or general licensee shall notify the Department, in writing:
1. Immediately following the filing of a petition for bankruptcy under any Chapter of Title 11 of the United States Code if the petition for bankruptcy is by or against:
    - a. The licensee;
    - b. An entity (as defined in the bankruptcy code) controlling the licensee or listing the license or licensee as property of the estate; or
    - c. An affiliate (as defined in the bankruptcy code) of the licensee; and
  2. Providing the following information:

- a. The bankruptcy court in which the petition for bankruptcy was filed, and
  - b. The bankruptcy case title and number, and
  - c. The date the petition was filed.
- H.** Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with R9-7-720. The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in R9-7-720 at the time of generator elution, in accordance with 10 CFR 35.3204.
- I.** Inalienability of Licenses
- 1. No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Department, after securing full information, finds that the transfer is in accordance with the provisions of this act and gives its consent in writing.
  - 2. An application for transfer of license must include:
    - a. The identity, technical and financial qualifications of the proposed transferee; and
    - b. Financial assurance for decommissioning information required by R9-7-323, 10 CFR 40.3 and 10 CFR 70.25.

**R9-7-318. Transfer of Radioactive Material**

- A.** A licensee shall not transfer radioactive material except as authorized under this Section.
- B.** Except as otherwise provided in the license and subject to the provisions of subsections (C) and (D), any licensee may transfer radioactive material:
  - 1. To the Department, after receiving prior approval from the Department;
  - 2. To the Department of Energy;
  - 3. To any person exempt from the rules in this Article to the extent permitted under the exemption;
  - 4. To any person authorized to receive radioactive material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Department, the U.S. Nuclear Regulatory Commission, or any Agreement State or Licensing State, or to any person otherwise authorized to receive radioactive material by

the Federal Government or any agency of the Federal Government, the Department, any Agreement State or Licensing State; or

5. As otherwise authorized by the Department in writing.

**C.** Before transferring radioactive material to a specific licensee of the Department, the U.S. Nuclear Regulatory Commission, or an Agreement State or Licensing State, or to a general licensee who is required to register with the Department, the U.S. Nuclear Regulatory Commission, or an Agreement State or Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

**D.** The transferor shall use one or more of the following methods for the verification required by subsection (C):

1. The transferor shall possess, and read, a current copy of the transferee's specific license or registration certificate;

2. The transferor shall possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

3. For emergency shipments the transferor shall accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided the oral certification is confirmed in writing within 10 days;

4. The transferor shall obtain information equivalent to that in subsection (D)(1) to (3) compiled by a reporting service from official records of the Department, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State or Licensing State regarding the identity of any licensee and the scope and expiration date of any license, registration, or certificate; or

5. When none of the methods of verification described in subsections (D)(1) to (4) are readily available or when a transferor desires to verify that information received by one of the above methods is correct or up-to-date, the transferor shall obtain and record confirmation from the Department, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State or Licensing State that the transferee is licensed to receive the radioactive material.

- E.** A transferor shall prepare and transport radioactive material as prescribed in the provisions of 9 A.A.C. 7, Article 15.
- F.** The Department shall approve an application for a specific license to initially transfer source material for use under R9-7-305, or equivalent regulations of the NRC or another Agreement State, if:
1. The applicant satisfies the general requirements specified in R9-7-309; and
  2. The applicant submits adequate information on, and the Department approves, the methods to be used for quality control, labeling, and providing safety instructions to recipients.
- G.** Each person licensed under this Section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "RADIOACTIVE MATERIAL."
- H.** Each person licensed under this Section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.
- I.** Each person licensed under this Section shall provide the information specified in subsections (I)(1) and (2) to each person to whom source material is transferred for use under R9-7-305 or equivalent provisions in the NRC or Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:
1. A copy of R9-7-305 and R9-7-318, or relevant equivalent regulations of the NRC or another Agreement State; and
  2. Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the source material.
- J.** Each person licensed under 10 CFR 40.54 shall file a report with the Department that includes the following information:
1. The name, address, and license number of the person who transferred the source material;
  2. For each general licensee under R9-7-305 or equivalent Agreement State provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and
  3. The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

**K.** Each person licensed under this Section shall maintain all information that supports the reports required by this Section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the Department, the NRC, or another Agreement State agency.

## ARTICLE 4. STANDARDS FOR PROTECTION AGAINST IONIZING RADIATION

### R9-7-448. Additional Reporting

- A. Each licensee shall notify the Department as soon as possible, but not later than four hours after the discovery of an event, and take immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed the limits specified in this Chapter or releases of licensed material that could exceed the limits specified in this Chapter. For purposes of this Section, event means a radiation accident involving a fire, explosion, gas release, or similar occurrence.
- B. Each licensee shall notify the Department within 24 hours after discovering any of the following events involving licensed material:
1. A contamination event that:
    - a. Requires that anyone having access to the contaminated area be restricted for more than 24 hours by the imposition of additional radiological controls to prohibit entry into the area; ~~and~~
    - b. Involves a quantity of radioactive material greater than five times the lowest annual limit on intake specified in Appendix B of this Article; and
    - c. Results in access to the contaminated area being restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination.
  2. An event in which equipment is disabled or fails to function as designed when:
    - a. The equipment is part of a system designed to prevent releases exceeding the limits specified in this Chapter, to prevent exposures to radiation and radioactive materials exceeding limits specified in this Chapter, or to mitigate the consequences of an accident; ~~and~~
    - b. The equipment performs a safety function; and
    - c. No redundant equipment is available and operable to perform the required safety function.
  3. An event that requires urgent medical treatment of an individual with radioactive contamination on the individual's clothing or body.
  4. A fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:
    - a. The quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of this Article, and

- b. The damage affects the integrity of the licensed material or its container.
- C. Each licensee shall make reports required by subsections (A) and (B) above by telephone to the Department. To the extent that the information is available at the time of notification, the information provided in these reports shall include:
  - 1. The callers's name, official title, and call back telephone number;
  - 2. A description of the event, including date and time;
  - 3. The exact location of the event;
  - 4. The isotopes, quantities, and chemical and physical form of the licensed material involved; and
  - 5. Any personnel radiation exposure data available.
- D. Each licensee who makes a report required by subsection (A) or (B) shall submit to the Department a written follow-up report within 30 days of the initial report. Written reports prepared as required by other rules may be submitted to fulfill this requirement if the reports contain all of the required information in this subsection. The report shall include the following:
  - 1. A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;
  - 2. The exact location of the event;
  - 3. The isotopes, quantities, and chemical and physical form of the licensed material involved;
  - 4. Date and time of the event;
  - 5. Corrective actions taken or planned and the results of any evaluations or assessments; and
  - 6. The extent of personnel exposure to radiation or to radioactive materials without identification of each exposed individual by name.
- E. Each licensee that makes a report required by subsection (A) or (B) shall submit a written follow-up report to the Department within ~~60~~ 30 days after the initial report.

## ARTICLE 15. TRANSPORTATION

### **R9-7-1507. Packaging Quality Assurance**

- A.** A licensee that transports radioactive material in the course of business or delivers radioactive material to a carrier for transport in a package for which a license, certificate of compliance, applicant for a certificate of compliance, or other approval has been issued by the Nuclear Regulatory Commission, or meets the applicable criteria (10 CFR 71, Subpart H, ~~revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~), shall establish, maintain, and execute the quality assurance program specified in 10 CFR 71, Subpart H.
- B.** The transportation of radioactive material shall be in accordance with the requirements in 10 CFR Part 71, with the exception of the following sections: 71.2, 71.6, 71.11, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71.85(a)-(c), 71.91(b), 71.99, 71.100, 71.101(c)(2), 71.101(g), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123 and 71.125. The provisions of this subsection apply to the transportation of radioactive material, or delivery of radioactive material to a carrier for transportation, regardless of whether or not the carrier is also subject to the rules and regulations of the NRC contained in 10 CFR Part 71 and other agencies of the United States having jurisdiction.
- ~~**C.**~~ In addition to the requirements in subsection (A) for a quality assurance program, a licensee shall verify by procedures such as checking or inspection, that deficiencies or defective material or equipment relative to the shipment of packages containing radioactive material are promptly identified and corrected.
- ~~**D.**~~ Before the first use of any Type B packaging, a licensee shall obtain approval of its quality assurance program by the Department.
- ~~**E.**~~ A licensee shall maintain sufficient written records to demonstrate compliance with the quality assurance program. Records of quality assurance pertaining to the use of a Type B package for shipment of radioactive material shall be maintained for three years after the package is used for a shipment.

### **R9-7-1510. Packaging**

- A.** A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

1. This general license applies only to a licensee that has a quality assurance program approved by the Department as satisfying R9-7-1507;
2. This general license applies only to a licensee that:
  - a. Has a copy of the license, certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;
  - b. Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Article;
  - c. Before the licensee's first use of the package, submits in writing to the Department and to ATTN: Document Control Desk, Director, Division of ~~Spent Fuel Storage and Transportation~~ Fuel Management, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in 10 CFR 71.1(a), the licensee's name, license number, and the package identification number specified in the package approval;
  - ~~d. Each certificate holder shall maintain, for a period of three years after the life of the packaging to which they apply. Records identifying the packaging by model number, serial number and date of manufacture;~~
  - e.d. The licensee, ~~certificate holder, and an applicant for a CoC~~, shall make available to the ~~Commission~~ Department for inspection, upon reasonable notice, all records required by this part. Records are only valid if stamped, initialed, or signed and dated by authorized personnel, or otherwise authenticated; and
  - f.e. The licensee, ~~certificate holder, and an applicant for a CoC~~ shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by 10 CFR 71.85; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. These records must be retained for three years after the life of the packaging to which they apply.
3. This general license applies only when the package approval authorizes use of the package under this general license.

4. For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of subsection (B).

**B. Type B packages.**

1. Before the first use of any packaging for the shipment of licensed material, refer to 10 CFR 71.85 (a), (b) and (c).
2. A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the NRC but without the “-85” designation in the identification number of the NRC certificate of compliance, may be used under the general license of subsection (A) with the following additional conditions:
  - a. Fabrication of the packaging is satisfactorily completed by April 1, 1999 as demonstrated by application of its model number in accordance with 10 CFR 71.85(c) ~~(Revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);~~
  - b. A package that is used for a shipment to a location outside the United States is subject to multilateral approval as defined in 49 CFR 173.403, ~~(Revised October 1, 2010 revised January 8, 2015, incorporated by reference, and available under R9-7-101.; This incorporated material contains and containing no future editions or amendments.);~~ and
  - c. A serial number which uniquely identifies each package which conforms to the approved design and is assigned to, and legibly and durably marked on, the outside of each package.
3. A licensee may modify the design and authorized contents of a Type B package, or a fissile material package, previously approved by NRC, provided:
  - a. The modifications of a Type B package are not significant with respect to the design, operating characteristics, or safe performance of the containment system, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73 ~~(Revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);~~
  - b. The modifications of a fissile material package are not significant, with respect to the prevention of criticality, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73 ~~(Revised January 1, 2010, incorporated by reference,~~

~~and available under R9-7-101. This incorporated material contains no future editions or amendments.); and~~

- c. The modifications to the package satisfy the requirements of this Section.
  4. The NRC will revise the package identification number to designate previously approved package designs as B(U), B(M), AF, BF, or A as applicable, and with the identification number suffix “-85” after receipt of an application demonstrating that the design meets the requirements of this Section.
  5. For purposes of this Section, package types are defined in 10 CFR 71.4, ~~revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~
- C. A general license is issued to any licensee of the Department to transport fissile material, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in 49 CFR 173, revised July 16, 2018, and 49 CFR 178, (Revised October 1, 2010 revised March 11, 2013, incorporated by reference, ~~and available under R9-7-101.; This incorporated material contains and containing no future editions or amendments.);~~ if the following requirements are met:
1. The licensee ~~shall maintain~~ maintains a quality assurance program approved by the Department as satisfying R9-7-1507.;
  2. The licensee ~~shall~~:
    - a. ~~Maintain~~ Maintains a copy of the specification; and
    - b. ~~Comply~~ Complies with the terms and conditions of the specification and the applicable requirements in 10 CFR 71, Subparts A, G, and H, ~~revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.;~~
  3. The licensee ~~may~~ does not use the specification container for a shipment to a location outside the United States, except by multilateral approval, as defined in 49 CFR 173.403, ~~revised October 1, 2010~~ January 1, 2015, incorporated by reference, ~~and available under R9-7-101.; This incorporated material contains and containing no future editions or amendments.;~~
  4. The general license applies only when a package’s contents:
    - a. Contain no more than a Type A quantity of radioactive material; and
    - b. Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.;

5. The general license applies only to packages containing fissile material that are labeled with a CSI which:
  - a. Has been determined in accordance with subsection (E);
  - b. Has a value less than or equal to 10; and
  - c. For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance); and
6. The CSI value ~~must meet~~ meets the following requirements:
  - a. The value for the CSI must be greater than or equal to the number calculated by the following equation:  $CSI=10[(\text{grams of } 235\text{U}/X) + (\text{grams of } 235\text{U}/Y) + \text{grams of } 235\text{U}/Z]$ ;
  - b. The calculated CSI must be rounded up to the first decimal place;
  - c. The values of X, Y, and Z used in the CSI equation must be taken from Tables 71-1 or 71-2 as appropriate located in 10 CFR 71.22, ~~(revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);~~
  - d. If Table 71-2 is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium must be assumed to be zero; and
  - e. Table 71-1 values for X, Y, and Z must be used to determine the CSI if:
    - i. Uranium-233 is present in the package;
    - ii. The mass of plutonium exceeds 1 percent of the mass of uranium-235;
    - iii. The uranium is of unknown uranium-235 enrichment or greater than 24 weight percent enrichment; or
    - iv. Substances having a moderating effectiveness (i.e., an average hydrogen density greater than H<sub>2</sub>O) (e.g., certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

**D. Foreign packaging.**

1. A general license is issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the Federal Department of Transportation as meeting the applicable requirements of 49 CFR 171.23, revised ~~October 1, 2010~~ March 30, 2017, incorporated by reference, ~~and~~

available under R9-7-101. ~~This incorporated material contains~~ and containing no future editions or amendments.

2. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the applicable provisions of R9-7-1507.
3. This general license applies only to:
  - a. Shipments made to or from locations outside the United States.
  - b. A licensee that:
    - i. Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and
    - ii. Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements in 10 CFR 71, Subparts A, G, and H, revised ~~January 1, 2010~~ September 9, 2015, ~~incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~

**E.** Routine determination before each shipment of licensed material shall ensure that the package with its contents satisfies the applicable requirements of this Article and of the license. The licensee shall determine that:

1. The package is proper for the contents to be shipped;
2. The package is in unimpaired physical condition except for superficial defects such as marks or dents;
3. Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;
4. Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;
5. Any pressure relief device is operable and set in accordance with written procedures;
6. The package has been loaded and closed in accordance with written procedures;
7. For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;
8. Any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of 10 CFR 71.45 (~~revised January 1, 2010, incorporated by reference, and~~

~~available under R9-7-101. This incorporated material contains no future editions or amendments.);~~

9. The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable, and within the limits specified in DOT regulations in 49 CFR 173.443, ~~(revised October 1, 2010 July 11, 2014, incorporated by reference, and available under R9-7-101. This incorporated material contains~~ and containing no future editions or amendments.);
10. External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in 10 CFR 71.47 ~~(revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.)~~, at any time during transportation; and
11. Accessible package surface temperatures will not exceed the limits specified in 10 CFR 71.43(g) ~~(revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.)~~, at any time during transportation.

**F.** Fissile material meeting the requirements of at least one of the conditions in subsections (F)(1) through (F)(6) are exempt from classification as fissile material and from the fissile material package standards of 10 CFR 71.55 and 71.59, but are subject to all other requirements of this part, except as noted.

1. Individual package containing 2 grams or less fissile material.
2. Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass for solid nonfissile material.
3. Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:
  - a. There is at least 2000 grams of solid nonfissile material for every gram of fissile material;
  - b. There is no more than 180 grams of fissile material distributed within 360 kg of contiguous nonfissile material; and
  - c. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass of solid nonfissile material.

4. Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass, and that the fissile material is distributed homogeneously and does not form a lattice arrangement within the package.
5. Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material must be contained in at least a DOT Type A package.
6. Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

**R9-7-1514. Reserved Records**

- A.** Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of licensed material not exempt under R9-7-1515, showing where applicable:
1. Identification of the packaging by model number and serial number;
  2. Verification that there are no significant defects in the packaging, as shipped;
  3. Volume and identification of coolant;
  4. Type and quantity of licensed material in each package, and the total quantity of each shipment;
  5. For each item of irradiated fissile material:
    - a. Identification by model number and serial number;
    - b. Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and
    - c. Any abnormal or unusual condition relevant to radiation safety;
  6. Date of the shipment;
  7. For fissile packages and for Type B packages, any special controls exercised;
  8. Name and address of the transferee;
  9. Address to which the shipment was made; and
  10. Results of the determinations required by R9-7-1510(E) and by the conditions of the package approval.

- B.** The licensee shall make available to the Department for inspection, upon reasonable notice, all records required by this Chapter. Records are only valid if stamped, initialed, or signed and dated by authorized personnel, or otherwise authenticated.
- C.** The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by R9-7-1507; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. These records must be retained for three years after the life of the packaging to which they apply.
- D.** Each record required by this Chapter must be legible throughout the retention period specified by each Department regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

**ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2  
QUANTITIES OF RADIOACTIVE MATERIAL**

**R9-7-1907. Communications**

Except where otherwise specified or covered under licensing program as provided in this chapter, all communications and reports concerning the rules in this Article may be sent as follows:

1. By mail addressed to: ATTN: Arizona Department of Health Services; Bureau of Radiation Control; Radioactive Materials Program; 4814 South 40th Street, Phoenix, Arizona 85040;
2. By hand delivery to the Department's offices at 4814 South 40th Street, Phoenix, Arizona 85040; or
3. Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD-ROM. Electronic submissions shall be made in a manner that enables the Department to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Electronic submissions can be made by ~~visiting the Department's website at <http://www.azdhs.gov/licensing/radiation-regulatory/index.php> and selecting specific RAM (Radioactive Material) Staff contact information~~ or by email to [ram@azdhs.gov](mailto:ram@azdhs.gov).

**R9-7-1923. Access Authorization Program Requirements**

**A. Granting unescorted access authorization:**

1. Licensees shall implement the requirements of this Article for granting initial or reinstated unescorted access authorization.
2. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by R9-7-1943(C) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

**B. Reviewing officials:**

1. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.
2. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification, to the ATTN: Bureau Chief, Bureau of Radiation Control, Arizona Department of Health Services, 4814 S. 40th Street, Phoenix,

Arizona 85040, that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official shall be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with R9-7-1925(C).

3. Reviewing officials shall be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling. Reviewing officials permitted unescorted access to category 1 or category 2 quantities of radioactive materials shall receive appropriate radiation safety training initially and at a frequency not to exceed 12 months. The licensee shall maintain records of the initial and refresher training for three years from the date of training for Department review.
4. Reviewing officials cannot approve other individuals to act as reviewing officials.
5. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:
  - a. The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or
  - b. The individual is subject to a category listed in R9-7-1929(A).

**C. Informed consent:**

1. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent shall include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of R9-7-1925(B). A signed consent shall be obtained prior to any reinvestigation.
2. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

- a. If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and
- b. The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

**D.** Personal history disclosure: Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this Article is sufficient cause for denial or termination of unescorted access.

**E.** Determination basis:

1. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this Article.
2. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this Article and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.
3. The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.
4. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.
5. Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

**F.** Procedures: Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures shall include provisions for the notification of individuals who are denied unescorted access. The procedures shall include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures shall contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

**G.** Right to correct and complete information:

1. Prior to any final adverse determination, licensees shall provide each individual subject to this Article with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification shall be maintained by the licensee for a period of 1 year from the date of the notification.
2. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees shall provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

**H.** Records:

1. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.
2. The licensee shall retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.
3. The licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

**R9-7-1927. Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material**

**A. General performance objective and requirements:**

1. Except for those individuals listed in R9-7-1929 and those individuals grandfathered under R9-7-1925(B), each licensee subject to the provisions of this Article shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the ~~Department~~ NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.
2. The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.
3. Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:
  - a. The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and
  - b. The previous access was terminated under favorable conditions.
4. Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background

investigation conducted under this Article, the Fingerprint Orders, or 10 CFR part 73, revised ~~January 1, 2015~~ December 12, 2018, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~ and containing no future editions or amendments. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of R9-7-1931(C).

5. Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

**B. Prohibitions:**

1. Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:
  - a. An arrest more than 1 year old for which there is no information of the disposition of the case; or
  - b. An arrest that resulted in dismissal of the charge or an acquittal.
2. Licensees may not use information received from a criminal history records check obtained under this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

**C. Procedures for processing of fingerprint checks:**

1. For the purpose of complying with this Article, licensees shall use an appropriate method listed in 10 CFR 37.7, revised ~~January 1, 2015~~ November 29, 2019, incorporated by reference, available under R9-7-101, and containing no future editions or amendments; to submit to the U.S. Nuclear Regulatory Commission, ~~Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05-B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to~~

~~FORMS.Resource@nrc.gov emailing MAILSVS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>. Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-8B20, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing [MAILSVS.Resource@nrc.gov](mailto:MAILSVS.Resource@nrc.gov). Guidance on submitting electronic fingerprints can be found at <https://www.nrc.gov/security/chp.html>.~~

2. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the ~~Security Branch, Division of Facilities and Security at 301-492-3531~~ Division of Physical and Cyber Security Policy by e-mailing [Crimhist.Resource@NRC.gov](mailto:Crimhist.Resource@NRC.gov).) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the ~~Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems~~. Licensee Criminal History Records Checks & Firearms Background Check information page at <https://www.nrc.gov/security/chp.html> and see the link for "How do I determine how much to pay for the request?".)
3. The U.S. Nuclear Regulatory Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

**R9-7-1977. Advance Notification of Shipment of Category 1 Quantities of Radioactive Material**

Each licensee shall provide advance notification to the Department and the governor of a State, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

1. Procedures for submitting advance notification:

- a. The notification shall be made to the Department and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees and participating Tribes is available on the NRC's website at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Material Safety, Security, State, and Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ~~Notifications to the Department shall be to the Department Director or their designee.~~ The notification to the Department may be made by email to [ram@azdhs.gov](mailto:ram@azdhs.gov) or by fax to (602) 437-0705.
  - b. A notification delivered by mail shall be postmarked at least 7 days before transport of the shipment commences at the shipping facility.
  - c. A notification delivered by any means other than mail shall reach the Department at least 4 days before the transport of the shipment commences and shall reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.
2. Information to be furnished in advance notification of shipment:  
Each advance notification of shipment of category 1 quantities of radioactive material shall contain the following information, if available at the time of notification:
    - a. The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;
    - b. The license numbers of the shipper and receiver;
    - c. A description of the radioactive material contained in the shipment, including the radionuclides and quantity;
    - d. The point of origin of the shipment and the estimated time and date that shipment will commence;
    - e. The estimated time and date that the shipment is expected to enter each State along the route;
    - f. The estimated time and date of arrival of the shipment at the destination; and
    - g. A point of contact, with a telephone number, for current shipment information.
  3. Revision notice:
    - a. The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later

than commencement of the shipment, to the governor of the State or the governor's designee and to the Department ~~Director~~ at the contact information available in R9-7-1907.

- b. A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with subsections (B) and (C)(1). The licensee shall also immediately notify the Department ~~Director~~ at the contact information available in R9-7-1907 of any such changes.
4. Cancellation notice: Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified and to the Department Director at the contact information available in R9-7-1907. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.
5. Records: The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.
6. Protection of information: State officials, State employees, and other individuals, whether or not licensees of the Department, the NRC, or an Agreement State, who receive schedule information of the kind specified in this Section shall protect that information against unauthorized disclosure as specified in R9-7-1943(D) of this Article.

## Materials Incorporated by Reference

- Agreement: <https://www.azdhs.gov/documents/licensing/radiation-regulatory/arizona-agreement.pdf>
- [10 CFR 35.50](#)(a) or (c)(1), revised July 16, 2018
- [10 CFR 35.59](#), revised March 27, 2006
- [10 CFR 37.7](#), revised November 29, 2019
- [10 CFR 71](#), revised September 9, 2015
- [10 CFR 73](#), revised December 12, 2018
- [21 CFR 1010.2](#), revised April 1, 2019
- [21 CFR 1020.40](#), revised April 1, 2019
- [40 CFR 190](#), revised December 1, 1979
- [40 CFR 191](#), revised December 20, 1993
- [49 CFR 107](#), revised April 19, 2017
- [49 CFR 171](#), revised April 19, 2017
- [49 CFR 172](#), revised November 23, 2015
- [49 CFR 173](#), revised March 6, 2019
- [49 CFR 174](#), revised February 28, 2019
- [49 CFR 175](#), revised October 18, 2018
- [49 CFR 176](#), revised November 7, 2018
- [49 CFR 177](#), revised September 25, 2013
- [49 CFR 178](#), revised November 7, 2018
- [49 CFR 179](#), revised September 25, 2018
- [49 CFR 180](#), revised March 30, 2017
- [49 CFR 171.23](#), revised March 30, 2017
- [49 CFR 173.403](#), revised January 8, 2015
- [49 CFR 173.443](#), revised July 11, 20140
- [49 CFR 173](#), revised July 16, 2018
- [49 CFR 178](#), revised March 11, 2013

## Statutory Authority for Rules in 9 A.A.C. 7

### **30-654. Powers and duties of the department**

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
  - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
  - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
  - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
  - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

**30-656. Authority for governor to enter into agreements with federal government; effect on federal licenses**

A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of radiation and the assumption of the responsibilities by this state.

B. Any person that, on the effective date of an agreement entered into under subsection A of this section, possesses a license issued by the federal government shall be deemed to possess a like license issued under this chapter, which shall expire either ninety days after receipt from the department of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

**30-657. Records**

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

**30-671. Radiation protection standards**

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

### **30-672. Licensing and registration of sources of radiation; exemptions**

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the

department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

**30-672.01. Registration of persons who install or service radiation machines; exception; roster of registrants**

A. A person who is in the business of installing or servicing radiation machines that are required to be registered by the department shall register with the department on a form provided by the department.

B. Notwithstanding subsection A of this section, a person who is subject to the jurisdiction of the department and who operates a radiation machine is not required to register with the department.

C. The registration form required pursuant to subsection A of this section shall be limited to the following information:

1. The full business name of the registrant.
2. The names of the owners if the registrant is a corporation or partnership.
3. The names of employees who carry out installation or service work for the registrant.
4. The business address of the registrant.

D. The department shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.

E. A registrant must reregister with the department if there is a change in the information provided under subsection C of this section.

**30-681. Inspections**

A. The department or its duly authorized representatives may enter at all reasonable times on any private or public property for the purpose of determining whether there is compliance with or a violation of this chapter and rules adopted under this chapter, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

B. If the director determines that there is reasonable cause to believe that a radiation source is not in compliance with the licensing requirements of this chapter, the director or the director's designee or agent may enter on and into the premises of any radiation source that is licensed or required to be licensed pursuant to this chapter at any reasonable time to determine compliance with this chapter and rules adopted pursuant to this chapter. An application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If the inspection shows that the radiation source is not adhering to the licensing requirements of this chapter, the director may take action authorized by this chapter. A radiation source whose license has been suspended or revoked in accordance with this subsection is subject to inspection when applying for relicensure or reinstatement of the license.

**30-683. Intergovernmental agreements; inspections; training programs; mammography facilities**

A. The department, subject to the approval of the governor, may enter into agreements with the federal government, other states or interstate agencies to perform on a cooperative basis with the federal government, other states or interstate agencies inspections or other functions relating to control of sources of radiation.

B. The department may institute training programs for the purpose of qualifying personnel to carry out this chapter and make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of the purposes of this chapter.

C. The department shall annually inspect facilities that provide diagnostic or screening mammography examinations.

**30-684. Conflicting ordinances by municipality or county**

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to sources of radiation shall not be superseded by this chapter, provided, such

ordinances or regulations are and continue to be consistent with the provisions of this chapter, amendments thereto and rules and regulations thereunder.

**30-686. Appeal; hearing**

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to title 41, chapter 6, article 10, and the notice shall state the person's right to make a written request for a hearing.

**30-687. Assessment; civil penalty; enforcement; appeals; collection**

A. The director may assess a civil penalty against a person that violates this chapter or a rule adopted pursuant to this chapter in an amount not to exceed five thousand dollars for each violation. Each day a violation occurs constitutes a separate violation. The maximum amount of any assessment is twenty-five thousand dollars for any thirty-day period.

B. The director may issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under subsection A of this section, the department shall consider all of the following:

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

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

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

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

**30-688. Emergency action**

A. If the director finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, the director may:

1. Order the summary suspension of a license pending proceedings for revocation or another action. These proceedings shall be promptly instituted and determined.
2. Order the impoundment of sources of radiation in the possession of any person that is not equipped to comply with or that fails to comply with this chapter or any rule adopted pursuant to this chapter.

B. The director may apply to the superior court for an injunction to restrain a person from violating a provision of this chapter or a rule adopted pursuant to this chapter. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The person may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

### **30-689. Violation; classification**

A. Any person who violates any provision of this chapter or any rule, regulation or order placed in effect pursuant thereto by the commission is guilty of a class 2 misdemeanor.

B. The provisions of subsection A shall not apply to any emergency regulation or order unless or until the person so violating such regulation or order has had actual knowledge of the regulation or order.

### **30-721. Adoption and text of compact**

The southwestern low-level radioactive waste disposal compact is adopted and enacted into law as follows:

#### **Article 1. Compact Policy and Formation**

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the low-level radioactive waste policy act, Public Law 96-573, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

#### **Article 2. Definitions**

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the southwestern low-level radioactive waste commission established in article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the atomic energy act of 1954 (42 U.S.C. sec. 2014(e) (2))).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K) "Major generator state" means a party state which generates ten per cent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten per cent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with article 7 of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

### **Article 3. The Commission**

(A) There is hereby established the southwestern low-level radioactive waste commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one per cent of the membership on the commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate. If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party state and shall serve at the pleasure of the governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility. The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

- (7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.
- (8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission. However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.
- (9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.
- (10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- (11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.
- (12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- (13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- (14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.
- (15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- (16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- (17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- (18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- (19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
- (a) The commission approves the importation agreement by a two-thirds vote of the commission.
  - (b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- (20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.
- (21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

#### **Article 4. Rights, Responsibilities, and Obligations of Party States**

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C) (1) Upon the effective date of this compact, the state of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the state of California. If the state of California does not extend this obligation, the party state, other than the state of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility. The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the low-level radioactive waste policy act, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

(4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respect to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not

limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article 3.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

#### **Article 5. Approval of Regional Facilities**

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

#### **Article 6. Prohibited Acts and Penalties**

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article 3.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

#### **Article 7. Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion**

(A) The states of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing

legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the state of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

#### **Article 8. Construction and Severability**

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The nuclear regulatory commission pursuant to the atomic energy act of 1954, as amended (42 U.S.C. sec. 2011 et seq.).

(2) An agreement state under section 274 of the atomic energy act of 1954, as amended (42 U.S.C. sec. 2021).

(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

#### **36-136. Powers and duties of director; compensation of personnel; rules; definition**

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.

**D-3**

**DEPARTMENT OF TRANSPORTATION (R20-0502)**

Title 17, Chapter 5, Article 6, Ignition Interlock Device Manufacturers and Ignition Interlock Service Providers

**Amend:** R17-5-601, R17-5-603, R17-5-604, R17-5-609, R17-5-610, R17-5-612, R17-5-616,  
R17-5-621

**Repeal:** R17-5-614

**New Section:** R17-6-614



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 8, 2020

**SUBJECT: DEPARTMENT OF TRANSPORTATION (R20-0502)**  
Title 17, Chapter 5, Article 6, Ignition Interlock Device Manufacturers and  
Ignition Interlock Service Providers

**Amend:** R17-5-601, R17-5-603, R17-5-604, R17-5-609, R17-5-610, R17-5-612,  
R17-5-616, R17-5-621

**Repeal:** R17-5-614

**New Section:** R17-6-614

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### **Summary:**

This regular rulemaking from the Department of Transportation (Department) seeks to amend rules and repeal and replace one rule in Title 17, Chapter 5, Article 6, regarding Ignition Interlock Device Manufacturers and Ignition Interlock Service Providers. This rulemaking seeks to implement a proposed course of action in the Department's One Year Review Report (1YRR) for these rules, which the Council approved at its August 6, 2019 Council Meeting.

The Department conducted an exempt rulemaking that became effective on July 1, 2018, to implement legislative changes contained in Laws 2018, Chapter 105 and Laws 2017, Chapter 331, to the operation of the ignition interlock program. The exempt rulemaking included establishing an ignition interlock device installation fee (\$20) that is payable by an ignition interlock user when an ignition interlock is installed on a user's vehicle following a driving

under the influence conviction. Pursuant to A.R.S. § 41-1008(E), the Department is conducting this regular rulemaking to continue charging the \$20 fee. In this rulemaking, the Department also seeks to make other changes to these rules as outlined in Item 6 of the Department's preamble.

The Department received an exemption from the rulemaking moratorium to conduct this rulemaking on September 20, 2019.

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

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

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

Yes. This rulemaking permanently establishes a new fee that was previously made by exempt rulemaking. The Department properly cites A.R.S. § 28-1462(H) (Ignition interlock device certification and decertification; service provider bonds) as statutory authority for this fee. In addition, the Department is conducting this rulemaking consistent A.R.S. § 41-1008(E), which states that a fee established by exempt rulemaking is effective for two years unless the Council grants an extension. The fee established by the exempt rulemaking became effective on July 1, 2018.

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

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

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

In 2018, the Department established an ignition interlock device installation fee of \$20. The \$20 fee is paid by approximately 20,000 Arizona drivers annually, which generates \$400,000 annually in revenue to fund the administrative costs of the ignition interlock program. In order to continue to charge this fee for more than two years, the Department seeks to permanently establish this fee through regular rulemaking.

Beginning July 1, 2018, any newly installed ignition interlock device must have global positioning software, wireless capability, and must contain a camera. Devices installed prior to July 1, 2018 have until October 1, 2020 to install a device that meets these requirements. The Department estimates that the impact of these rules on manufacturers may range from minimal to substantial.

The rulemaking also clarifies an improper reporting definition and requires an ignition interlock service provider to send the Department notification of a device installation within 24 hours, which is expected to result in more accurate and timely reporting.

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

The Department believes that the rule changes benefit ignition interlock users and the general public, and that these program changes and public safety benefits greatly outweigh the costs.

The \$20 ignition interlock installation fee, which generates approximately \$400,000 annually, was determined by the Department to be the least cost possible for users to fully support the ignition interlock program. The clarification of an improper definition and the additional reporting requirement are only expected to result in more accurate and timely reporting.

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

Stakeholders include the Department, ignition interlock device users, ignition interlock device manufacturers and service providers, and the general public.

The clarification of an improper reporting definition, as well as the requirement for an ignition interlock service provider, is expected to result in more accurate and timely reporting of individual ignition interlock activity, which benefits ignition interlock users as well as the general public.

Ignition interlock device users must pay a \$20 fee for installation, but the Department states that this fee is the least possible for users to fully support the ignition interlock program, which generates approximately \$400,000 annually.

The requirement of newly installed ignition interlock devices to have additional capabilities is a cost the Department states will range from minimal to substantial. As of December 2019, about 1,500 participants had an old device that did not fulfill the new requirements. Manufacturers will need to make an adequate number of ignition interlock devices that meet the requirements available to ignition interlock service providers. The manufacturer will bear the costs of the new devices and may either absorb the costs or pass on the costs to ignition interlock users.

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

No. As stated in the Department's preamble, it made only minor clarifying and technical changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. Upon review, Council staff agrees with the Department that these changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

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

Yes. As described in the Department's preamble, the Department received comments from two individuals in conducting this rulemaking. The comments and the Department's responses are included in the preamble. Council staff finds that the Department adequately responded to the comments it received.

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

The Department states that A.R.S. § 28-1468 authorizes the Director of the Department to issue an authorization for an ignition interlock service provider. The rules in Article 6 also state the process for certifying a manufacturer's ignition interlock device. The Department states that while the rules do not require a general permit, the authorization and certification are general permits consistent with the definition of general permits in A.R.S. § 41-1001(11). Upon review of the relevant statutes, Council staff agrees and finds that the Department complies with A.R.S. § 41-1037.

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

The Department states that there is no corresponding federal law. However, the Department notes that the rules in Article 6 incorporate by reference the 2013 National Highway Traffic Safety Administration (NHTSA) Model Specifications for Breath Alcohol Devices (BAIIDs) and the 2015 NHTSA technical corrections to these specifications.

**11. Conclusion**

In this regular rulemaking, the Department seeks to permanently establish a fee that was previously established through an exempt rulemaking in 2018. It also seeks to make other changes to the rules regarding the ignition interlock program. If approved, the amended rules would be more clear, concise, understandable, and effective. The Department accepts the usual 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.

March 12, 2020

VIA E-MAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Ms. Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

**RE: Department of Transportation, 17 A.A.C. 5, Article 6, Regular Rulemaking**

Dear Ms. Sornsins:

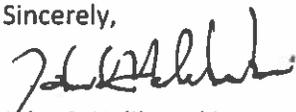
The Arizona Department of Transportation (ADOT) submits the accompanying final rulemaking for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A):

1. The close of record date was February 4, 2020.
2. The rulemaking activity does not relate to a five-year review report, but does relate to a one-year review report.
3. The rulemaking permanently establishes a new fee previously made by exempt rulemaking.
  - a. The statutory authority for the fee is in A.R.S. § 28-1462(H).
4. The rulemaking does not contain a fee increase.
5. An immediate effective date is not requested pursuant to A.R.S. § 41-1032.
6. The preamble certifies that the Department did not rely on or review any studies in the Department's review, evaluation, or justification for the rules.
7. The Department certifies that the preparer of the economics, small business, and consumer impact statement did not notify the Joint Legislative Budget Committee because no new full-time employees are necessary to implement and enforce the rules.

The following documents are enclosed in this final rules package:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
3. The written comments received by the agency concerning the proposed rules;
4. A copy of the incorporation by reference material;
5. General and specific statutes authorizing the rules, including relevant statutory definitions; and
6. Any other rules or statutes that contain relevant definitions.

Sincerely,



John S. Halikowski  
ADOT Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 17. TRANSPORTATION**  
**CHAPTER 5. DEPARTMENT OF TRANSPORTATION**  
**COMMERCIAL PROGRAMS**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R17-5-601	Amend
R17-5-603	Amend
R17-5-604	Amend
R17-5-609	Amend
R17-5-610	Amend
R17-5-612	Amend
R17-5-614	Repeal
R17-5-614	New Section
R17-5-616	Amend
R17-5-621	Amend

**2. Citations to the agency's statutory authority to include both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 28-366, 28-1462, and 28-1465

Implementing statutes: A.R.S. §§ 28-1301, 28-1461 through 28-1469

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

The effective date of the rules is 60 days after filing with the Secretary of State

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

Not applicable.

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

Not applicable.

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

Notice of Docket Opening: 25 A.A.R. 3293, November 8, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 3691, December 27, 2019

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

Name: Jane McVay, Senior Rules Analyst

Address: Arizona Department of Transportation

206 S. 17th Ave., MD 180A

Phoenix, AZ 85007

Telephone: (602) 712-4279

E-mail: [jmcvay@azdot.gov](mailto:jmcvay@azdot.gov)

Website: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://azdot.gov/about/government-relations/contact-us-government-relations>.

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

The Department received approval to initiate this rulemaking from Ben Blink in the Governor's Office on September 20, 2019. These rules implement changes recommended in a One-Year Rule Review Report approved by the Governor's Regulatory Review Council on August 6, 2019, that improve, clarify, and update the ignition interlock program. The Department filed exempt rules with the Office of Secretary of State that became effective on July 1, 2018, to implement legislative changes contained in Laws 2018, Chapter 105, and Laws 2017, Chapter 331, to the operation of the ignition interlock program. The rules included establishing an ignition interlock device installation fee that is payable by an ignition interlock user when an ignition interlock is installed on a user's vehicle following a driving under the influence conviction. In order to comply with A.R.S. § 41-1008(E), the Department is required to go through the regular rulemaking process to continue charging this fee. The 2018 rules required that a certified ignition interlock device installed after July 1, 2018 must be capable of wireless transmission, have a camera, and meet additional requirements. At that time ignition interlock users with previously installed devices that operated properly were grandfathered in. These rules require those users to return to an ignition interlock service provider by October 1, 2020 to install a new device that meets all the rule requirements. The rules clarify that device installation reports must be submitted to the Department within 24 hours, distinguish device accuracy from calibration, increase device accuracy, expand early recall to include any four reportable violations within a 90-day continuous period, correct a citation error, specify that the camera in an ignition interlock device shall take a digital image of the driver, modify the procedure for collection of civil penalties, and make other clarifying changes and program improvements. The rules also clarify that a missed rolling retest occurs while a person is operating the vehicle. The rules provide that the Department will determine the payment method used by an Ignition Interlock Service Provider (IISP) to transfer the installation fees to the Department.

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

The Department did not review or rely on any studies relating to this rulemaking.

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

Not applicable.

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

Clarification of the improper reporting definition and the requirement for an ignition interlock service provider to send the Department notification of a device installation within 24 hours, are expected to result in more accurate and timely reporting of individual ignition interlock activity, which benefits ignition interlock users.

A.R.S. § 28-1462(H) authorized the Department to establish an ignition interlock device installation fee, in an amount determined by the Director. The exempt rules that were effective July 1, 2018 established an ignition interlock device installation fee of \$20 payable by an ignition interlock user beginning July 1, 2018, when a person installs an ignition interlock device on a user's vehicle. The Department estimates that this fee will be paid to a user's ignition interlock service provider by approximately 20,000 Arizona drivers annually, who have an ignition interlock requirement. The fee is transmitted monthly to the Department and is estimated to generate approximately \$400,000 annually, which funds the administrative costs of the ignition interlock program. The ignition interlock device installation fee is the only fee that an ignition interlock user pays to the Department. The fee was established to impose the least cost possible for users to fully support the ignition interlock program. In order to continue to charge this fee for more than two years, the Department is seeking approval of the fee through regular rulemaking.

The Department will not hire any new employees to implement the rule changes and has not notified JLBC. Beginning July 1, 2018, for any new installation of an ignition interlock device or device replacement, an ignition interlock service provider must install a device that has global positioning software, wireless capability, and contains a camera. Users whose device was installed before July 1, 2018 were not required to have a new device installed as long as a user's device operated properly and met federal requirements. These rules require those users to obtain an updated device from the user's ignition interlock service provider by October 1, 2020 that meets all the rule requirements, and to pay the \$20 ignition interlock device installation fee. The rules also make other clarifying changes to improve the rules. The Department anticipates that the impact of the rules on manufacturers may range from minimal to substantial. Although the number of participants with old ignition interlock devices has dropped as participants fulfill their ignition interlock requirement, about 1,500 participants had an old device as of December 2019. Many of these participants had ignition interlock violations which extended their ignition interlock period. Five manufacturers had more than 200 but less than 400 devices in use, six manufacturers had less than 100 old devices in use, and one manufacturer had no old devices in use. Manufacturers will need to make available an adequate number of ignition interlock devices to ignition interlock service providers that meet the device requirements in the rules to replace old devices. The manufacturer will bear the cost of the new devices and may either absorb those costs or pass on the cost to ignition interlock users in fee increases for ignition interlock services. The new devices have cameras that capture digital images of ignition interlock user activity, allowing verification of the person blowing into the device and performing other interlock actions. The reporting clarification is expected to require review by the manufacturers to ensure accurate reporting

may require a manufacturer to add staffing or increase employee and employee-related costs. The rules require each user to receive additional information about the proper way to take a rolling retest. An ignition interlock device user who has four reportable violations over a 90-day continuous period is required to go to the user's service center within 72 hours for a violation reset and for information about how to prevent violations. In summary, the Department believes that the rule changes benefit ignition interlock users and the general public, and that these program changes and public safety benefits greatly outweigh the cost to ignition interlock users.

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

The final rulemaking includes these non-substantive changes to conform the language to the *Administrative Code*, to clarify the rules, make grammatical changes, and ensure that the rules are clear and understandable:

In R17-5-603(E)(1), after "Anticircumvention provisions," insert "on the device."

In R17-5-609(I), after "the termination of the," strike "person", insert "person's."

In R17-5-609(L), strike "n," insert "manufacturer."

In R17-5-609(O), after "which", strike "ean", insert "may."

In R17-5-610(K)(4), at the end of the sentence, strike "retest", insert "retests."

In R17-5-601 in the definition of missed rolling retest, after "substantiated breath sample" insert "while operating the vehicle," to clarify that a missed rolling retest occurs when a person is operating a motor vehicle.

In R17-5-603(D), the rule is amended to include device calibration with an accuracy within plus or minus 0.005g/210L of the reference value, calibration using a specific reference value, and that the device must be accompanied by a Certificate of Analysis.

In R17-5-604(E), the rule is amended to strike "~~promptly~~" and require a person with an ignition interlock device installed before July 1, 2018 to return to the person's IISP by October 1, 2020 to obtain an updated device.

In R17-5-610 in the definition of early recall, the language was amended to read: "or any four valid reportable violations within a continuous 90-day period."

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

The Department conducted an oral proceeding on the rules and did not receive any oral comments on the rules. The close of record was on February 4, 2020. The Department received comments from two individuals, which are listed below with the Department's response.

Rule Section/Comment	Department Response
1. R17-5-601: Define dry gas that conforms to the model specifications for calibrating units for breath alcohol testers published by the National Highway	1. This change requires all manufacturers with a certified ignition interlock device to use dry gas to calibrate breath alcohol testers and requires the

<p>Traffic Safety Administration (NHTSA). Modify definition of reference value to mean the known and correct alcohol concentration of dry gas. Commenter supports ensuring Arizona dry gas standards have been evaluated by the U.S. Department of Transportation Volpe National Transportation Systems Center (VNTSC) and meet the NHTSA model specifications.</p>	<p>Department to incorporate by reference the NHTSA Model Specifications for Breath Alcohol Testers. This change would require all IISP's to have gas tanks and use dry gas to calibrate breath alcohol testers. This impacts one Ignition Interlock Service Provider (IISP) with 257 clients at 21 service centers, has cost implications for the IISP to purchase gas tanks for each service center, and requires training staff to calibrate breath alcohol testers using dry gas. These costs may be passed on to ignition interlock users. For these reasons, the Department does not recommend changing this rule at this time.</p>
<p>2. R17-5-601: Modify early recall definition to provide that any four valid reportable violations occurring within a 90-day period beginning on the initial date of installation of the device require a person to return to a service center within 72 hours. The commenter notes that accuracy check appointments can vary from 77 to 90 days, which may allow unintended variation in the accumulation of violations.</p>	<p>2. The Department agrees that the calibration time frame varies among users. The proposed language would not be applicable to an ignition interlock user who has had a certified ignition interlock device (CIID) for some time since the 90-day period begins on the initial installation date. The Department has amended the early recall definition to provide that any four valid reportable violations that occur within a continuous 90-day period require a person to return to a service center within 72 hours.</p>
<p>3. R17-5-601: Modify early recall definition to provide that the four valid reportable violations are between calibrations. Commenter suggests substitution of calibration for accuracy check appointments because appointments may be rescheduled or cancelled.</p>	<p>3. Some IISP's require their ignition interlock customers to calibrate CIID's at 30-day intervals, and other IISP's require their customers to calibrate CIID's at intervals up to 90 days, so this change would not be fair to users with variable calibration periods. The Department has amended the early recall definition to provide that any four valid reportable violations that occur within a continuous 90-day period require a person to return to a service center within 72 hours.</p>
<p>4. R17-5-601: Delete the definition of emergency bypass. Authority to operate a vehicle not equipped with a CIID in a substantial emergency is in A.R.S.</p>	<p>4. The Department does not believe that additional rules are needed to implement the provisions in A.R.S. § 28-1464. A.R.S. § 28-1464(K) specifies</p>

<p>§ 28-1464, but there is no language about when or how this is approved or accomplished. There are two references in the rules to this term. The other reference is a requirement to record this event in the data storage system.</p>	<p>the penalty for violating this section, and if convicted for violating Subsections B, C, E, or G, the person's ignition interlock period is extended for not more than one year. The definition of emergency bypass covers circumstances described in the definition of emergency situation in which the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent emergency that requires operation of the vehicle. In this case the person can inform the IISP or the technician, and the IISP may issue an emergency bypass. The Department does not believe that users have misused this rule and does not recommend additional rule changes.</p>
<p>5. R17-5-601: Delete the definition of emergency situation. The commenter notes that the statutory authority to operate a vehicle not equipped with a CIID in a substantial emergency is different than the statutory provisions referenced.</p>	<p>5. This definition is needed because the term "emergency situation" is referenced in R17-5-611(C) and (C)(1). The Department has rulemaking authority to adopt rules that the Director of the Department deems necessary for the administration and enforcement of A.R.S. Title 28, Chapter 4, Article 5, relating to ignition interlock devices. The definition of substantial emergency in A.R.S. § 28-1464(L) defines circumstances in this statute that are a substantial emergency for a person with a limited or restricted driving privilege who has an ignition interlock requirement. No rule changes are needed.</p>
<p>6. R17-5-601: In the definition of improper reporting, delete provision on reporting an incident that occurs after the vehicle is turned off. Does this include a retest violation when the retest began before the vehicle was turned off and/or circumvention and tampering?</p>	<p>6. Tampering and circumvention are contained in the definition of "violation" in R17-5-601 as violations, which are reportable activities, that a manufacturer shall report to the Department within 24 hours pursuant to R17-5-610(F)(1) and (F)(6). If a person with an ignition interlock is in a vehicle and turns off the vehicle when the device requests a rolling retest, and misses the rolling retest, the manufacturer must report the missed rolling retest to the Department. The Department believes it is</p>

	necessary to retain this provision to clarify that actions occurring after the vehicle is turned off that are not violations should not be reported to the Department. No rule changes are needed.
7. R17-5-601: In the definition of independent laboratory, require ignition interlock device (IID) certification by an International Organization for Standardization (ISO) 17025 certified testing facility that tests a device to the 2014 NHTSA Model Specifications.	7. This amends the definition of independent laboratory to require a manufacturer that wishes to certify an ignition interlock device in R17-5-604 to submit an independent laboratory report from an ISO 17025 testing facility that has tested the device (CIID) to the NHTSA Model Specifications. Currently, a manufacturer must submit a report from an independent laboratory showing that the device meets the NHTSA Model Specifications. The Department is concerned that requiring certification by an ISO 17025 testing facility would increase costs for each manufacturer to certify a CIID, and believes further consideration should be given to the costs and benefits of this certification. The Department is not required to adopt best practices of the American Association of Motor Vehicle Administrators (AAMVA). No rule changes are needed.
8. R17-5-601: In the definition of permanent lock-out, provide that this IID feature is one in which a motor vehicle will not accept a breath sample until the IID is reset, as defined by the Association of Ignition Interlock Program Administrators (AIIPA).	8. The Department believes that the current definition of permanent lock-out is clear and does not recommend a rule change.
9. R17-5-601: Modify definition of reference sample device to a pressurized cylinder containing dry gas of known alcohol concentration. The commenter supports the use of dry gas in Arizona because it is more accurate to calibrate CIID's.	9. The Department did not include a dry gas definition in comment number one, and does not recommend changing the proposed language at this time for the reasons stated in the response to comment one.
10. R17-5-601: Modify definition of reference value to require use of dry gas to calibrate CIID's, which the commenter believes is more accurate.	10. The Department does not recommend this change for the same reasons as in the response to comment one and to ensure consistency with other rule provisions.
11. R17-5-601: Modify definition of temporary	11. The Department believes that the current

<p>lock-out to state that this feature will not allow a breath sample for 5 minutes after a breath alcohol test result indicating an alcohol concentration above the set point.</p>	<p>definition of temporary lock-out is clear and does not recommend the definition change.</p>
<p>12. R17-5-603(D): The commenter wants to change the device requirements to include:</p> <ol style="list-style-type: none"> <li>1. Calibration to an accuracy within plus or minus 0.005g/210L of the reference value;</li> <li>2. Using a reference sample device that is NIST traceable with a reference value between .020 g/210L and .050g/210L adjusted for the elevation at which the reference sample device is being used;</li> <li>3. Be accompanied by a Certificate of Analysis (COA), and</li> <li>4. Removal from service when the cylinder pressure drops below 50 PSI.</li> </ol>	<p>12. The Department has modified the language in R17-5-603(D) to include the calibration accuracy provisions, use of a reference sample device with the reference values cited, and the Certificate of Analysis provisions. The accuracy provisions ensure greater device accuracy. The Department does not believe it is necessary to include the reference to “National Institute of Standards and Technology (NIST) traceable,” a technical metrology term, in the rules. The provisions relating to adjusting for elevation are not necessary because this is only applicable if dry gas is used. The requirement to remove a reference sample device from service is not needed in the rules because it is contained in the contract with manufacturers.</p>
<p>13. R17-5-603(G): Amend CIID provisions to provide that the camera is not located in the handset. The commenter states that a device with a camera in the handset blocks the driver’s field of vision because the handset must be held in a horizontal position for the camera to capture a digital image of the driver’s compartment.</p>	<p>13. R17-5-603(G) states that the camera shall not distract or impede the driver from safe vehicle operation and details the operation of the camera in a CIID. The Department believes that the language of this rule provides adequate guidance to manufacturers and IISP’s about where the camera should be located, and does not believe it is necessary to change this rule.</p>
<p>14. R17-5-603(I)(4): Delete the requirement that a device shall record all emergency bypasses in its data storage system, which the commenter feels is unnecessary due to deleting the emergency bypass definition.</p>	<p>14. The Department retained the definition of emergency bypass in comment 4, and no change is needed to the requirement to record emergency bypasses in a device’s data storage system in R17-5-603(I)(4).</p>
<p>15. R17-5-603(I)(7): One commenter wanted to modify the device recording of any four valid reportable violations to restrict them to a 90-day period beginning on the initial date of installation of the device to clarify the time frame when violations</p>	<p>15. To comply with the language amended in R17-5-601 in the early recall definition, the Department will amend this rule to provide that any four valid reportable violations that occur within a continuous 90-day period require a person to return to a service</p>

<p>may occur as accuracy check appointments, and to comply with the early recall definition.</p> <p>Another commenter wanted to require the reference to four valid reportable violations to be between a person's calibrations for consistency.</p>	<p>center within 72 hours. The Department recognizes that some devices are calibrated at variable intervals and chose not to link this provision to calibration or accuracy check appointments. Since a long time may have elapsed after some individuals had their CIID installed, the option to begin the 90-day period at installation was not chosen.</p>
<p>16. R17-5-604(C)(3): Add new provision requiring that a manufacturer when applying for device certification must submit written documentation of the manufacturer's certification to the current International Organization for Standardization (ISO) 9001 Quality Management System standards for construction, production and device repair. Require all state certified manufacturers to apply for ISO 9001 certification by July 1, 2020, and successfully obtain certification by January 1, 2021. Require new manufacturers to obtain ISO 9001 certification before applying for device certification. This complies with American Association of Motor Vehicle Administrators (AAMVA) best practices and is required in other states.</p>	<p>16. The Department is not required to adopt AAMVA best practices or legislation adopted in other states. ISO certification is a lengthy process that would increase costs for manufacturers, which may be passed on to ignition interlock users. This change would require all manufacturers to reapply to the Department to certify each CIID, and would delay device approval. A manufacturer can opt to obtain ISO 9001 device certification if the manufacturer believes it is beneficial to undergo this process without making this change.</p>
<p>17. R17-5-604(E): The commenter wants to amend the rule to provide that a person with a CIID installed before July 1, 2018 must return to the person's service provider to exchange the CIID for an updated device within 30 days of the effective date of the rules, or set a definite date for the exchange, such as July 1, 2020, to avoid confusion for manufacturers and participants.</p>	<p>17. The effective date of the rules will be 60 days after the Notice of Final Rulemaking is approved by the Governor's Regulatory Review Council (GRRC) and filed with the Secretary of State. The Department has amended the rule to require individuals with ignition interlocks installed before July 1, 2018 to obtain an updated device from their IISP by October 1, 2020. Since a person returns to a service center for device calibration every 30 to 90 days, this will allow a person with an old device to exchange the device for an updated one at that time. As of December 1, 2019, 1,500 persons in the state had an old ignition interlock device. This number is expected to decrease by implementation as the ignition interlock period ends for some persons. The</p>

	<p>requirement for a person with an ignition interlock to have a device that operates wirelessly, has a global positioning system, and takes a digital image, became effective on July 1, 2018. At that time the Department allowed persons with old devices that operated properly to continue to use those devices, however, new installations required updated devices. The Department believes that implementation of the device exchange by October 1, 2020 allows adequate time for manufacturers and customers to obtain and get an updated device installed.</p>
<p>18. R17-5-604(E): Another commenter recommends that an individual should have two calibration periods to install an updated CIID, supports more certainty about when a participant must install an updated CIID, and wants to reduce the burden on manufacturers and individuals, especially those whose interlock requirement is less than 144 to 180 days, who would not be required to obtain an updated CIID. As an alternative, set a definite date for individuals to exchange the CIID, such as July 1, 2020, for example. The commenter questions whether it is fair to require device exchange for a customer with only a few months left in the person's ignition interlock period and to impose the increased monthly cost for the enhanced ignition interlock device.</p>	<p>18. The Department has amended R17-5-604(E) to set a date of October 1, 2020 by which individuals with ignition interlocks installed before July 1, 2018 must obtain an updated device from their IISP. By allowing a 3-month period for manufacturers and users to obtain an updated device will facilitate this process. Many users are expected to have more than one calibration period to install a CIID.</p> <p>To comply with statute changes in 2017 stating that the Department shall only certify CIID's that meet or exceed the NHTSA Model Specifications, have wireless capability, take a digital image, and have global positioning systems, the 2018 rulemaking required persons with an ignition interlock device installed after July 1, 2018 to obtain an updated device with these capabilities. Those persons with a device installed previously could keep their ignition interlock device as long as the device worked properly. Since the requirement to install a new device has been phased in over time, the number of old devices has dropped substantially, and the Department has reduced the overall impact on both manufacturers and users. Users who still have an old device that does not meet the current requirements have had a violation that extended the</p>

	<p>person's ignition interlock period.</p> <p>The only fee established by the Department that a user will pay at installation is the \$20 installation fee. Each ignition interlock service provider establishes the fees for various ignition interlock services, which are not set in statute or rule.</p>
<p>19. R17-5-606(A)(5): Add new provision to require the manufacturer to have documentation showing certification to the ISO 9001 Quality Management System standards in order for the Department to determine that a manufacturer's application for device certification is complete.</p>	<p>19. Since the Department did not require ISO 9001 certification to certify a device, the Department has not adopted this rule change.</p>
<p>20. R17-5-609(D)(11): This rule requires an ignition interlock service provider (IISP) to inform a person to not avoid compliance with the rolling retest requirement by turning off the vehicle's ignition or by keeping the motor vehicle in operation while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. The commenter did not have a specific recommendation to change this rule, but suggested additional language to be added to R17-5-610(K). See comment 23.</p>	<p>20. Service providers that install, service, and maintain ignition interlock devices instruct users about how the device works and how to avoid a violation. Instructing a customer to not leave a vehicle when the vehicle is running and parked, when a rolling retest is requested, is a logical extension of that role. The Department supports the rule change to have a service provider advise a customer, at the time of device installation, to not avoid compliance with the rolling retest requirement by keeping a motor vehicle operating while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. No rule change is needed.</p>
<p>21. R17-5-609(L): Amend this provision if necessary to ensure that a manufacturer shall develop a reference and problem solving guide. The commenter wanted to correct an error relating to the word "manufacturer."</p>	<p>21. R17-5-609(L) currently states that a manufacturer must develop a reference and problem solving guide. The published proposed rules contained an error, which is corrected in item 10 to refer to "manufacturer."</p>
<p>22. R17-5-610(F): Amend real-time reporting requirement to require reportable activity to be submitted by the manufacturer to the Department in real-time within 24 hours, by adding "as service permits." The commenter believes this will be more consistent with the definition of "real-time" or "real-</p>	<p>22. A.R.S. § 28-1461(B) requires a manufacturer to provide to the Department in real-time and in a form prescribed by the Department, information relating to individual ignition interlock activity. R17-5-610 details the information that a manufacturer must transmit to the Department.</p>

<p>time reporting,” and address situations in which the device is unable to communicate with a cell phone tower.</p>	<p>Subsections (C), (D), and (E) currently require electronic submission of device installation, calibration, and removal within 24 hours. Subsection (L) requires a manufacturer to ensure that a CIID (Certified Ignition Interlock Device) electronically and wirelessly uploads data in real-time to the manufacturer’s website, and is required to submit this information and reports electronically in a daily File Transfer Profile (FTP) to the Department. Subsection (M) currently provides that where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available. R17-5-610(M) already covers the situation mentioned. The Department does not believe a rule change is necessary.</p>
<p>23. R17-5-610(K)(4): The commenter recommends amending the following language to immediately contact the Department if the manufacturer finds that the reported information indicates submission of an extension or violation if all digital images taken during an 18-minute time frame indicate that a person was not in the vehicle to take a rolling retest: “Submission of an extension of a person’s ignition interlock period or a violation to the Department when the digital image taken at the beginning of the first rolling retest within the 18 minute time frame, and every image thereafter during the 18 minute time frame, indicates the person was not in the vehicle to take the rolling retest.” The commenter is concerned that the Department’s rule change conflicts with R17-5-610(G).</p>	<p>23. The Department supports retaining the proposed language in R17-5-610(K)(4) with the amendment to change the word “retest” to “retests.” An extension would occur when a person keeps the vehicle running, but is not in the vehicle, and misses 3 rolling retests during an 18-minute time frame. R17-5-615(G) provides that: “The Department shall extend a person’s ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of three consecutive rolling retests that occur within an 18-minute time frame during a drive cycle.” The Department does not believe that this language conflicts with R17-5-610(G), which states that a person shall not avoid compliance with the rolling retest requirement by turning off the vehicle.</p>
<p>24. R17-5-610(K)(4): Another commenter recommended deleting proposed language requiring a manufacturer to immediately contact the Department if the reported information indicates that an ignition interlock period was extended or a</p>	<p>24. A missed rolling retest that occurs after the person turns off a vehicle when the device prompts for a rolling retest is reportable activity for noncompliance under R17-5-610(F). If the person exits the vehicle before the rolling retest prompt,</p>

<p>violation occurred when a person was not in the vehicle to take the rolling retest. The commenter questioned what happens when a person turns off the car after the rolling retest prompt and exits the vehicle.</p>	<p>and misses or fails 3 consecutive rolling retests during an 18-minute drive cycle, this is a violation, and requires the Department to extend the person's ignition interlock period for six months. If the person was not in the vehicle for any or one rolling retest, it is not a violation, and the Department voids the extension to prevent lengthy extensions in this circumstance. This change to require a manufacturer to immediately contact the Department when an extension is submitted when a person was not in the vehicle will save Department staff considerable time in reviewing digital images and voiding unnecessary extensions that users may incur.</p>
<p>25. R17-5-615: The commenter suggests amending this rule on rolling retests to allow a manufacturer to apply to the Department, subject to the Department's approval, to utilize the global positioning system (GPS) of a CIID to delay an initial rolling retest if the GPS does not detect that the vehicle is moving. The commenter is proposing this because some missed rolling retests that are reported, and may extend a person's ignition interlock period, occur when a person is not in the vehicle.</p>	<p>25. The Department appreciates the commenter's draft rule revisions to address the issue of a driver with an ignition interlock requirement who misses a rolling retest because the driver is not present in a vehicle, however, it is not feasible to include A.A.C.R17-5-615 in this rulemaking. Only one IISP has a CIID with the technology to detect that a vehicle is not moving in the fashion presented to the Department. The Department recommends a change to clarify the definition of missed rolling retest in R17-5-601 as follows: "Missed rolling retest means the person refused or failed to provide a valid and substantiated breath sample <u>while operating the motor vehicle</u>, in response to a requested rolling retest within the time period prescribed in R17-5-615(E). This addresses the commenter's proposal to reduce the exorbitant number of missed rolling retest violations reported, without requiring the other manufacturers to purchase this technology.</p>

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

There are no other matters prescribed by statute applicable to ADOT or to this rulemaking.

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

A.R.S. § 28-1468 authorizes the Director of the Department to issue an authorization for an ignition interlock service provider. The ignition interlock rules in 17 A.A.C. 5, Article 6 also contain a process for certifying a manufacturer's ignition interlock device. The rules do not require a general permit, but authorization and certification are general permits because the activities or practices in the class are substantially similar in nature for all ignition interlock service providers and manufacturers to perform authorized activities.

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

A federal law is not specifically applicable to the rules. The rules in 17 A.A.C. 5, Article 6 incorporate by reference the 2013 NHTSA Model Specifications for Breath Alcohol Devices (BAIIDs) and the 2015 NHTSA technical corrections to these specifications. The rules are not more stringent than federal law.

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

The Department did not receive a business competitiveness analysis.

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

R17-5-604(C)(3)(a) incorporates by reference the 2013 Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), and the 2015 NHTSA technical corrections.

**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, amended, or repealed as emergency rules.

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

**TITLE 17. TRANSPORTATION**  
**CHAPTER 5. DEPARTMENT OF TRANSPORTATION**  
**COMMERCIAL PROGRAMS**

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK  
SERVICE PROVIDERS**

Section

- R17-5-601. Definitions
- R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration
- R17-5-604. Ignition Interlock Device Certification; Application Requirements
- R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing
- R17-5-609. IISP and Manufacturer Responsibilities
- R17-5-610. Reporting; Reportable Activity
- R17-5-612. Records Retention; Submission of Copies and Quarterly Reports
- R17-5-614. ~~Ignition Interlock Device Installation Fee; Financial Records~~ Ignition Interlock Device Installation  
Fee; Financial Records
- R17-5-616. Civil Penalties; Hearing
- R17-5-621. Service Center Application

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK  
SERVICE PROVIDERS**

**R17-5-601. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

“Alcohol concentration” means the weight amount of alcohol contained in a unit volume of breath or air, measures in grams of ethanol/210 liters of breath of air and expressed as grams/210 liters.

“Alveolar breath sample” means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

“Anticircumvention feature” means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

“Authorization agreement” or “agreement” means an agreement authorized by the Director that an IISP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

“Breath alcohol test” means analysis of a sample of the person’s expired alveolar breath to determine alcohol concentration.

“Bump starting” means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

“Business day” means a day other than a Saturday, Sunday, or state holiday.

“Calibration” means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

“Cancellation” means the termination of a manufacturer’s ignition interlock device certification for ignition interlock device installation.

“Certification” means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

“Certified ignition interlock device,” “CIID,” or “device” means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications; that connects a breath analyzer to a motor vehicle’s ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person’s breath is below a preset level.

“Circumvent” or “circumvention” means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

- The bump start of a motor vehicle with a certified ignition interlock device;
- The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;
- The introduction of an intentionally contaminated or a filtered breath sample;

The intentional disruption or blocking of a digital image identification device;

The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and;

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person's driving privilege and the usage or discontinuation of usage of a CIID.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data logger" means the electronic record of all ignition interlock device activity during the period when the device is installed.

"Data storage system" means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

"Defective ignition interlock device" means an ignition interlock device that:

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

"Drive cycle" means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

"Early recall" means that a person's ignition interlock device recorded one tampering or circumvention event, ~~or~~ any ignition interlock malfunction, or any four valid reportable violations within a continuous 90-day period, that requires a person to return to a service center within 72 hours.

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance in which the person informs the IISP or IISP-certified technician that the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

"Established place of business" means a business location that is:

- Approved by the Department;
- Located in Arizona;
- Not used as a residence; and

Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

“False sample” means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

“Filtered breath sample” means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

“Free restart” means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

“FTP” means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

“Global positioning system” means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

“Ignition interlock device installation fee” means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person to an IISP when a CIID is installed on, or transferred to a person’s vehicle.

“Ignition interlock period” means the period in which a person is required to use a CIID that is installed on a vehicle.

“Ignition interlock service provider” or “IISP” means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider’s authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

“Improper reporting” means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person’s ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department’s request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person;

Failure of a manufacturer to electronically send a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after installing a CIID;

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant’s vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person’s vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID; or

Failure of a manufacturer to validate any person's ignition interlock period extension within 10 days; or

An Reporting an incident that occurs after the person's vehicle is turned off.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

"Material modification" means a change to a CIID that affects the functionality of the device.

"Missed rolling retest" means the person refused or failed to provide a valid and substantiated breath sample while operating the motor vehicle, in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

"Mobile services" means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP's service center, that meet the requirements of R17-5-618.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Permanent lock-out" means a feature of the CIID in which a motor vehicle will not start until the CIID is reset by an IISP or an IISP-certified technician.

"Person" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Real-time" or "real-time reporting" means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including ~~photographs~~ digital images, to the manufacturer's website for viewing by the Department without delay, as electronic or digital service permits.

"Reference sample device" means a device containing a sample of known alcohol concentration.

“Reference value” means an alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of a CIID.

“Retest set point” has the same meaning as set point.

“Rolling retest” means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

“Service center” means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

“Set point” means an alcohol concentration of 0.020 g/210 liters of breath. ~~The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters.~~

“Tampering” means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

“Technician” means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

“Temporary lock-out” means a feature of the CIID which will not allow a motor vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

“Vehicle identification number” or “VIN” means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

“Violation” (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

- Circumventing the CIID as defined in R17-5-601;

- Tampering with the CIID as defined in A.R.S. § 28-1301;

- Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4);

- Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

- Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age;

- Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person’s drive cycle;

- Disconnecting or removing a CIID, except:

  - On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or

  - On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

“Violation reset” means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

**R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration**

- A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.
- B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. All devices shall meet the setpoint requirements of R17-5-601 ~~when used at ambient temperatures of 20° Celsius to 83° Celsius.~~ and the following requirements:
  - 1. Be calibrated to have an accuracy within plus or minus 0.005 g/210L of the reference value;
  - 2. Be calibrated using a known reference value between .020 g/210L and .050 g/210L; and
  - 3. Be accompanied by a Certificate of Analysis (COA).
- E. A device shall be designed so that anticircumvention features will be difficult to bypass.
  - 1. Anticircumvention provisions on the device shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
  - 2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in real-time from the device and transmit daily to the Department, a person's ignition interlock activity in an FTP batch file.
- G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal operation of the vehicle, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.
- H. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
  - 1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file;
  - 2. A clear ~~photograph~~ digital image shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
  - 3. Each ~~photograph~~ digital image shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
  - 4. The camera shall produce a digital image, ~~identifiable verification, or a photograph~~ of the person in all lighting conditions, including brightness, darkness, and low light conditions.
- I. A device shall:
  - 1. Automatically purge alcohol before allowing analysis.
  - 2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person's

daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person's calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.

3. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware shall:
  - a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
  - b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).
4. Record all emergency bypasses in its data storage system.
5. Provide a visual reminder on the device that a calibration check must be performed on the person's CIID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
  - a. The device needs service; and
  - b. The time remaining until a permanent lock-out occurs.
6. Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.
7. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5 for one instance of tampering or circumvention, ~~or any ignition interlock device malfunction,~~ or any four valid reportable violations within a continuous 90-day period, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.
8. Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
9. When a violation results in a permanent lock-out mode, the device shall:
  - a. Immobilize the person's vehicle;
  - b. Uniquely record the event in the data storage system; and
  - c. Require a violation reset by the IISP.
10. Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.
11. After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
12. Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.

- J.** No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
  2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
  3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.

**R17-5-604. Ignition Interlock Device Certification; Application Requirements**

- A.** A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
- B.** To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
1. The manufacturer's name;
  2. The address of the manufacturer's principal place of business in this state and telephone number;
  3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
  6. The manufacturer's electronic mail address.
  7. The following statements, signed by the manufacturer:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
    - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
      - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized IISP relating to the installation and operation of the ignition interlock device; and
      - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
    - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
    - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C.** A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a ~~photograph~~ digital image, drawing, or other graphic depiction of the device;
  2. A document that contains the complete technical specifications for the accuracy, reliability, security, data

- collection, recording, and tamper detection capabilities of the ignition interlock device;
3. An independent laboratory's report for each device model that:
    - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
    - b. Provides the independent laboratory's name, address, and telephone number; and
    - c. Provides the name and model number of the ignition interlock device tested.
  4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3), that states all of the following:
    - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists.
    - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
    - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
    - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.
    - e. The laboratory presented accurate test results to the Department.
  5. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
    - a. A product liability policy with a current effective date;
    - b. The name and model number of the ignition interlock device model covered by the policy;
    - c. Policy coverage of \$1,000,000 and \$3,000,000 in the aggregate;
    - d. The manufacturer as the insured and the state of Arizona as an additional insured;
    - e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
    - f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.
  6. A statement that the ignition interlock device has a camera, includes a global positioning system, and

provides real-time reporting.

- D. ~~Beginning on July 1, 2018, for~~ For any new installation of an a certified ignition interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified ignition interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
- E. A person whose CIID was installed prior to July 1, 2018, ~~and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly, shall keep the CIID on the person's vehicle.~~ that does not meet all the requirements of Subsection (D) shall return to the person's IISP by October 1, 2020 to exchange the CIID for a CIID that meets all the requirements of Subsection (D).

**R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing**

- A. An application for certification of an ignition interlock device model is complete when the Department receives:
1. From the manufacturer, a properly prepared application form;
  2. From the manufacturer, all additional items required under R17-5-604(C);
  3. From the Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets or exceeds the NHTSA specifications in R17-5-604(C); and
  4. From the manufacturer, a letter or notification that the device meets the following standards:
    - a. The anticircumvention features in R17-5-603(E),
    - b. The data storage capacity requirement in R17-5-603(I)(2), and
    - c. The constant communication requirement in ~~R17-5-610(P)~~ R17-5-610(O).
- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:
1. The design, material, or workmanship is defective, causing the ignition interlock device model to fail to function as intended;
  2. The manufacturer's product liability insurance coverage is terminated or canceled;
  3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  4. The manufacturer or the independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
  5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C), the requirements in this Article; or
  6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Department shall mail to the manufacturer, written notification of the certification or denial of certification

of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.

- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

**R17-5-609. IISP and Manufacturer Responsibilities**

- A. An IISP shall refer a person only to the IISP's certified technician.
- B. An IISP shall provide the Department and each person with a toll-free telephone number to call to obtain the names and phone numbers of the IISP's certified technicians, the IISP service center locations, and hours of operation for the IISP service centers.
- C. An IISP shall certify each technician by providing adequate training and oversight for the technician to perform one of the activities at a service center, which are installation, inspection, calibration, service, or removal of a CIID.
- D. An IISP shall provide to every person operating a motor vehicle equipped with a CIID, and any other persons who will operate the motor vehicle, training on how to operate the motor vehicle. An IISP shall instruct the person on all of the following:
  - 1. How to use the system;
  - 2. How to obtain service for the CIID;
  - 3. How to find answers to any additional questions;
  - 4. How the alcohol retest feature works;
  - 5. How drinking alcohol before a test may result in a reading of sensitive or fail;
  - 6. How the CIID shall not be removed, except by an IISP or IISP-certified technician;
  - 7. How noncompliance with a regularly scheduled calibration check for a person with a limited or restricted driving privilege shall result in suspension of the person's driving privilege under A.R.S. § 28-1463 until proof of compliance is submitted to the Department under A.R.S. § 28-1461, and the duration of the person's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
  - 8. What the penalties are for circumvention of the CIID;
  - 9. What the penalties are for tampering with, or misusing the CIID;
  - 10. What will happen after failing a start-up breath alcohol test;
  - 11. What will happen after a person has a set of three consecutive valid and substantiated missed rolling retests within an 18-minute time frame during a drive cycle; and that a person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; or by keeping the motor vehicle in operation while the vehicle is parked, and leaving the vehicle when a rolling retest is requested;
  - 12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
  - 13. How to provide a properly delivered alveolar breath sample.

- E. An IISP shall have each person sign a document stating that the IISP has instructed the person regarding each topic contained in subsections (D) and (L), and has received the manufacturer's written instructions for operation of the CIID.
- F. An IISP shall inform a person that a compliance check on a CIID is required 30 days and 60 days after installation of the device, which shall be done electronically.
- G. An IISP shall inform each person to bring the vehicle to a service center for a calibration check within every 77 to 90-day period until the person is eligible for device removal.
- H. An IISP shall check each CIID for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each person's calibration check at a service center as required under R17-5-706.
- I. An IISP shall ensure that the manufacturer reports to the Department electronically under R17-5-610 if any evidence of tampering is discovered, and the manufacturer shall submit valid and substantiated proof or evidence of a reportable activity. An IISP shall keep visual evidence of a person's tampering or circumvention for a minimum of three years after the termination of the ~~person's~~ person's required ignition interlock period.
- J. An IISP shall submit to the Department a list of the IISP-certified technicians, subcontractors, or agents, and service centers at the beginning of the contract with the Department, within 5 business days of making a change to the list previously provided, and on a monthly basis as requested by the Department.
- K. An IISP shall comply with the provisions of this Article and A.R.S. Title 28, Chapter 4, Article 5.
- L. A n manufacturer shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:
  - 1. Operating a motor vehicle equipped with the CIID;
  - 2. Cleaning and caring for the CIID; ~~and~~
  - 3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID; and
  - 4. How to properly take a valid and substantiated rolling retest.
- M. A manufacturer shall notify the Department within 10 days of a change of address of its principal place of business in this state.
- N. A manufacturer or an IISP shall provide a warning label, for each CIID installed, which shall have an orange background and shall include the following:
  - 1. Be a minimum size of two inches by one inch;
  - 2. Be printed in a minimum of nine-point font;
  - 3. Be printed in Arial font, or a font of substantially similar size and legibility; and
  - 4. Contain the words in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- O. A manufacturer shall ensure that the IISP or the IISP-certified technician affixes conspicuously and maintains on each installed CIID the warning label described under subsection (N), which ~~can~~ may be affixed to the device or to the device's cord.
- P. A manufacturer shall develop written instructions for the installation and removal of an ignition interlock device

from a motor vehicle.

- Q. While a person maintains a functioning CIID in a vehicle under A.R.S. Title 28, Chapter 4, Article 5, the ignition interlock manufacturer shall electronically provide to the Department and transmit daily to the Department the information and reports prescribed in R17-5-610 and R17-5-615.
- R. The manufacturer is responsible for overseeing any agents or subcontractors, including vendors and distributors, as well as overseeing the manufacturer's IISP to ensure adherence to all performance standards.

**R17-5-610. Reporting; Reportable Activity**

- A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.
- C. Certified ignition interlock device installation verification.
  - 1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.
  - 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Report type;
    - h. Technician identification number;
    - i. A unique identification number for the CIID;
    - j. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
    - k. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- D. Certified ignition interlock device calibration check.
  - 1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
  - 2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means, which shall include:
    - a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any ~~photographs~~ digital images of the person; and
    - b. A data logger that shows at least 12 hours of data before and after the violation.

3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means, which may include:
    - a. Photographs;
    - b-a. Video recordings;
    - e-b. Written statements; and
    - d-c. Any other evidence relevant to a violation.
  4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Report type;
    - h. Missed rolling retest count, dates, and times;
    - i. Technician identification number;
    - j. Alcohol concentration violation count, dates, time, and alcohol concentration;
    - k. Tampering violation count, dates, and time;
    - l. Circumvention count, dates, and time;
    - m. Device download date;
    - n. Device download time;
    - o. Bypass code indication, date, and time;
    - p. A unique identification number for the CIID;
    - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
    - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- E. Certified ignition interlock device removal report.
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;

- e. Report date;
  - f. Install date;
  - g. Removal date;
  - h. Report type;
  - i. Technician identification number;
  - j. A unique identification number for the CIID;
  - k. The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
  - l. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
  - m. Missed rolling retest count, dates, and times;
  - n. Device download date; and
  - o. Device download time.
- F. Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours:
- 1. Tampering with a CIID as defined in A.R.S. § 28-1301;
  - 2. Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute ~~timeframe~~ time frame during a person's drive cycle;
  - 3. Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
  - 4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
  - 5. Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age;
  - 6. Circumvention of a CIID as defined in R17-5-601; or
  - 7. Disconnecting or removing a CIID, except:
    - a. On repair of the vehicle, if the person provided to the HSP, technician, or service center advance notice of the repair and the anticipated completion date; or
    - b. On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.
- G. A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; or by keeping the motor vehicle operating while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).
- H. A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.
- I. A manufacturer shall ensure that a CIID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by

these rules.

- J. A manufacturer shall review within 10 days all reports generated sent by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.
- K. A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
  - 1. An obvious mechanical failure of a CIID;
  - 2. Obvious errors in the recorded CIID data that cannot be attributed to a person's actions; ~~or~~
  - 3. Obvious errors in the transmission of CIID data to the Department, including misreported instances of tampering; or
  - 4. Submission of an extension of a person's ignition interlock period or a violation to the Department when a person was not in the vehicle to take the rolling retests.
- L. A manufacturer shall ensure that a CIID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.
- M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.
- N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.
- O. A CIID shall have constant communication between the manufacturer's server and relay unit while the device is in use.
- P. All data, including ~~photographs~~ digital images, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

**R17-5-612. Records Retention; Submission of Copies and Quarterly Reports**

- A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CIID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a commercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.
- B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's ignition interlock records and provide the Department with electronic access to the records for three years.
- C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10

days after Department personnel request copies of records, including records relating to installation and operation of the CIID.

- D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
  - 1. The number of CIID's the IISP currently has in service;
  - 2. The number of CIID's installed since the previous quarterly report; and
  - 3. The number of CIID's removed by the IISP since the previous quarterly report; and
  - 4. Other information required by the Department.
- E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

**R17-5-614. ~~Ignition Interlock Device Installation Fee; Financial Records~~ Ignition Interlock Device Installation Fee; Financial Records**

- ~~A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.~~
- ~~B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP on ServiceArizona.com, or as specified by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.~~
- ~~C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.~~
- ~~D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.~~
- ~~E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.~~
- ~~F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.~~
- A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.
- B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP, as determined by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.
- C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.

- D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.
- E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.
- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

**R17-5-616. Civil Penalties; Hearing**

- A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of ignition interlock data, as defined in R17-5-601; ~~that may cause the Department to erroneously initiate corrective action against a person.~~ The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:
  1. \$100 for the first occurrence, but not to exceed \$1,000 per series of occurrences of improper reporting on a specific date;
  2. \$250 for the second occurrence, but not to exceed \$2,500 per series of occurrences of improper reporting on a specific date; and
  3. \$500 for the third or subsequent occurrence, but not to exceed \$5,000 per series of occurrences of improper reporting on a specific date.
- B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail a notice to the manufacturer ~~a notice stating~~ that civil penalties may be imposed for improper reporting. The notice shall:
  1. Specify the basis for the action; and
  2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.
- C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.
- E. ~~Action to enforce the collection of a civil penalty assessed under subsection (A) shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in which the hearing is held.~~ If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the director may file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

**R17-5-621. Service Center Application**

- A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP shall submit to the Department for approval a properly completed service center application for approval of the IISP's service centers.
- B. An IISP shall provide the following information to the Department:
1. The service center name, which shall match the name on the service center;
  2. The business address of the established place of business of each service center or business location;
  3. The telephone number of each established place of business of each service center or business location;
  4. The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation;
  5. The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  6. The name and model number of each CIID the IISP plans to install;
  7. An indication of any service centers that will provide mobile services;
  8. Any applicable business licenses and the governmental entity; and
  9. The following statements signed by the IISP:
    - a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
    - b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
    - c. A statement that the IISP agrees to comply with all requirements in these rules; and
    - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- C. The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.
- D. The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
  2. If an application is incomplete, the notice shall specifically identify the required information that is missing.
- E. An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
1. After receiving all of the required information, the Department shall notify the IISP that the application is complete.
  2. The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.
- F. The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).

- G.** For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
1. Administrative completeness review time frame: 10 days.
  2. Substantive review time frame: 30 days.
  3. Overall time frame: 40 days.
- H.** If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- I.** An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.
- J.** If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.
- K.** An IISP shall use this process to reapply to the Department for a service center application.

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**  
**TITLE 17. TRANSPORTATION**  
**CHAPTER 5. DEPARTMENT OF TRANSPORTATION**  
**COMMERCIAL PROGRAMS**  
**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK**  
**SERVICE PROVIDERS**  
**R17-5-601, R17-5-603, R17-5-604, R17-5-609, R17-5-610, R17-5-612, R17-5-614, R17-5-616, and**  
**R17-5-621**

**A. Economic, small business and consumer impact summary:**

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

The Arizona Department of Transportation is initiating this rulemaking to implement rule changes recommended in the Department's One-Year Rule Review Report on the ignition interlock rules in 17 A.A.C. 5, Article 6, as approved by the Governor's Regulatory Review Council (GRRC) on August 6, 2019. The rules include the ignition interlock device installation fee established by exempt rulemaking in 2018. Following a person's driving under the influence conviction, the Department requires the person to install an ignition interlock device on the person's vehicle. As authorized by statute, beginning July 1, 2018, an ignition interlock service provider is required to charge an ignition interlock user a fee on installation of a device, and remit these monies to the Department. To comply with A.R.S. § 41-1008(E) and to continue charging this fee for more than two years, the Department is required to obtain GRRC approval of the fee in a regular rulemaking. The rules also clarify that device installation reports must be submitted to the Department within 24 hours, distinguish device accuracy from calibration, correct a citation error, specify that the camera in an ignition interlock device shall take a digital image of the driver, modify the procedure for collecting civil penalties, and clarify that a missed rolling retest occurs while a person is operating a vehicle.

**a. The conduct and its frequency of occurrence that the rules are designed to change:**

The rules clarify that each manufacturer must submit a report to the Department within 24 hours after an ignition interlock device is installed to ensure timely notification to the Department and accurate tracking of ignition interlock user compliance. Although each manufacturer is required to send ignition interlock activity reports, including installation reports, to the Department in 24 hours, the Department does not receive all the required reports. The rules also require those ignition interlock users who have an older ignition interlock device on their vehicle to return to the ignition interlock service provider to obtain a new device by October 1, 2020. This requirement is expected to impact less than 1,500 ignition interlock users. Requiring all ignition interlock users to have comparable devices will level the playing field for all ignition interlock users and ensure accurate reporting. Approval of the rules will allow the Department to continue to collect an ignition interlock device installation fee of \$20 from an ignition interlock device user on installation of a device. Clarification of the missed rolling retest

definition and other rule changes are intended to reduce the Department's workload in reviewing extensions.

**b. The harm resulting from the conduct the rules are designed to change and the likelihood it will continue to occur if the rules are not changed:**

If the rules are not approved, the Department will not have authority to continue to charge the ignition interlock device installation fee. This fee provides all the funding for the ignition interlock program. If the rules are not approved, the Department would need to fund the program through another source, which would decrease funds available for other programs or transportation improvements.

Additionally, some manufacturers may not submit an installation report for all ignition interlock user device installations, which may cause the Department to have inaccurate information about a person's ignition interlock device usage. If the rules are not changed, some ignition interlock users will continue to have old devices that may not ensure accurate reporting of certain ignition interlock activity.

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

Approval of the rules will ensure that an ignition interlock service provider continues to transmit the ignition interlock device installation fee monthly from individual users, and the Department continues to receive the fees to fund the ignition interlock program. Clarification of the reporting requirement will ensure that an ignition interlock service provider submits ignition interlock installation reports to the Department within 24 hours. Other changes clarify information that a manufacturer should report and clarify improper reporting, which will improve reporting of ignition interlock user activity for ignition interlock users and increase the program efficiency.

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

The Department anticipates that the impact on manufacturers to provide those ignition interlock users with a device installed prior to July 1, 2018, with an updated device may range from minimal to substantial. Under the new requirements, ignition interlock devices are required to operate wirelessly, have a global positioning system, and take digital images of users. Although the number of old ignition interlock devices continues to drop as participants fulfill their ignition interlock requirement, about 1,500 participants had an old device as of December 2019. Many of these participants had ignition interlock violations that extended their ignition interlock period. Five manufacturers had more than 200 but less than 400 old devices in use, six manufacturers had less than 100 old devices in use, and one manufacturer had no old devices in use. As those users come to the end of their ignition interlock periods, the number of old devices will drop. Manufacturers are expected to have increased production, purchasing, and distribution costs to provide an adequate number of updated ignition interlock devices that meet the device requirements in the rules. Manufacturers will bear the cost of the updated devices. Due to the gradual transition to require all users to have new devices, the cost impact on manufacturers has been reduced.

Ignition interlock users with old devices and new users will be required to pay an ignition interlock device installation fee of \$20 when a new device is installed, unless the device replaces a defective device. The fee

was set at \$20 in order to generate sufficient revenue to cover the program costs. The ignition interlock device installation fee is the only fee that an ignition interlock user pays that the Department receives to cover the program costs. The requirement for all users to have a new device that has the same properties will be beneficial to ignition interlock users and ensure accurate tracking of ignition interlock usage.

The current rules require manufacturers to review ignition interlock activity reported to the Department. The reporting clarifications may require additional review by manufacturers to ensure accurate reporting of ignition interlock activity to the Department, which may increase employee costs for manufacturers.

The rule changes clarify reporting time frames and the type of information that a manufacturer is required to report, as well as information that should not be reported to the Department about user activity. The rule changes will be beneficial to ignition interlock users and ensure accurate tracking of ignition interlock activity. Additionally, the ignition interlock program provides public safety benefits to the general public. Although the rules may increase some ignition interlock costs on businesses that choose to contract with the Department, the Department believes that the program changes and public safety benefits greatly outweigh the costs to ignition interlock users.

**3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Jane McVay, Senior Rules Analyst

Address: Arizona Department of Transportation  
 Rules and Policy Development  
 206 S. 17th Ave., MD 180A  
 Phoenix, AZ 85007

Telephone: (602) 712-4279

E-mail: [jmcvay@azdot.gov](mailto:jmcvay@azdot.gov)

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://azdot.gov/about/government-relations/contact-us-government-relations>.

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

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

See paragraph (A)(1) above.

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

Persons to bear costs	Persons directly benefiting
Ignition interlock users	Ignition interlock service providers and manufacturers
Ignition interlock users	Ignition interlock users and the Department of Transportation

Persons to bear costs	Persons directly benefiting
Ignition interlock manufacturers	Manufacturers and ignition interlock users

3. **Analysis of costs and benefits occurring in this state:**

Cost-revenue scale. The initial costs are defined as follows:

Minimal	Less than \$10,000
Moderate	\$10,000 to \$99,999
Substantial	\$100,000 or more

The Department estimates that the initial cost of the rule changes may be minimal, or less than \$10,000, for some manufacturers that have few customers with old ignition interlock devices. For some manufacturers with a considerable number of customers with old ignition interlock devices, the Department estimates that the annual cost of the rule changes will be moderate, ranging from \$10,000 to \$99,999. For other manufacturers with a substantial number of customers with old ignition interlock devices, the Department estimates that the initial cost will be substantial, ranging from \$100,000 or more. The Department estimates that manufacturers will incur some device programming costs to expand early recall.

a. **Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the rulemaking:**

The cost of the rulemaking to the Department is minimal and includes the costs associated with the rulemaking. Approval of the rulemaking and the ignition interlock device installation fee authorizes the Department to continue collecting the \$20 ignition interlock device installation fee. This fee covers the administrative costs of the statewide ignition interlock program, which provides public safety benefits and benefits other law enforcement agencies in the state. Approximately 20,000 persons in the state have an ignition interlock requirement. An ignition interlock device installation fee of \$20 payable on installation, was established at the least cost and burden in order to generate \$400,000, the cost of the ignition interlock program. The rules benefit ignition interlock users and the Department because the rule clarifications increase the accuracy of individual ignition interlock activity records, and lessen unnecessary case review.

b. **Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking:**

The rules will not impose any costs on political subdivisions, but will benefit residents of other political subdivisions and local law enforcement agencies. Ignition interlock device installation and other services are provided to ignition interlock users by ignition interlock service providers at service centers throughout the state. The administration and enforcement of a statewide ignition interlock program provides public safety benefits to the driving public and to state and local law enforcement entities.

- c. **Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:**

The rules will directly impact ignition interlock manufacturers. Ignition interlock device users with old devices will be required to return to their service provider to obtain an updated ignition interlock device certified by the manufacturer, and will pay a \$20 ignition interlock installation fee for each vehicle that has an installed ignition interlock device. Because ignition interlock service providers pass through these fees to the Department to operate the program, the fees do not increase the revenue of ignition interlock service providers. If a manufacturer determines that additional review of ignition interlock user activity and digital images is necessary, the rule changes may increase the payroll expenditures of ignition interlock manufacturers. Ignition interlock service providers and manufacturers will benefit from the rule changes and reporting clarifications.

Manufacturers are expected to have increased production, purchasing, and distribution costs to provide an adequate number of new ignition interlock devices for users with old devices to meet the device requirements in the rules. Manufacturers are expected to have annual costs ranging from minimal to substantial to provide updated devices to ignition interlock service providers for users with old devices to meet the rule requirements.

- 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:**

The Department anticipates that the rules will have a minor impact on employment by ignition interlock service providers and manufacturers. The Department has not hired any new employees to administer this program, and does not anticipate any impact on employment in other agencies or political subdivisions.

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

- a. **Identification of the small businesses subject to the rulemaking:**

The Department has 9 manufacturers that have certified an ignition interlock device for installation and 8 ignition interlock service providers that offer ignition interlock services in the state. Most of the manufacturers and ignition interlock service providers are large businesses that design, construct, and produce an ignition interlock device that is installed, calibrated, and serviced by an ignition interlock service provider. Many of these service providers offer ignition interlock services to users in numerous states, however, several providers may fall under the definition of a small business. Small businesses must meet the same business requirements in rule and statute as large businesses.

- b. **Administrative and other costs required for compliance with the rulemaking:**

The Department anticipates that the rule changes may increase employee costs to provide additional review of digital images before they are sent to the Department. An ignition interlock service provider may need to provide additional information to the Department in its quarterly reports, which is expected to have a minimal cost. Ignition interlock service providers contract with the Department, and

do not pay application, licensing, or other fees to the Department. A small number of service centers may require new signage to reflect the name used when initially applying to the Department.

Manufacturers have varying production, purchasing, and shipping costs to provide new ignition interlock devices to ignition interlock service providers. Those ignition interlock users with old devices will be required to get an updated ignition interlock device from the user's service provider. The number of old ignition interlock devices in use continues to drop as the ignition interlock period ends for some participants and new participants obtain new devices. Over 1,500 participants had an old device as of December 2019. Five manufacturers had more than 200 but less than 400 devices in use, six manufacturers had less than 100 old devices in use, and one manufacturer had no devices in use. The Department does not charge certification or other fees to a manufacturer to certify an ignition interlock device.

**c. Description of the methods that ADOT may use to reduce the impact on small businesses:**

The statutes do not allow the Department to minimize the impact of the rules on small businesses, so no alternative methods can be used. Small businesses may choose to contract with the Department to provide ignition interlock services.

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

The Department believes that, on the whole, the rule changes are beneficial to ignition interlock users. The reporting requirements will provide more accurate reporting of individual ignition interlock activities. Other rule changes will ensure that ignition interlock devices have accurate breath alcohol readings.

An exempt rulemaking in 2018 established a \$20 ignition interlock device installation fee for users with a new device installed beginning July 1, 2018. Users with a properly operating device were not required to get a new device and pay the fee. A new ignition interlock user and users with old devices will pay a \$20 fee when an ignition interlock device is installed on a user's vehicle. Approval of the rule will ensure that the Department continues to receive the fee, thereby providing continued funding to administer the program and provide customer service. The \$20 ignition interlock installation fee imposes the least cost and burden on about 20,000 ignition interlock users in order to generate about \$400,000, the funding necessary for the Department to administer an ignition interlock program with services provided by private businesses.

For comparison purposes, the Department determined that in the ignition interlock programs of other states, some examples of the fee received by a state agency when an ignition interlock device is installed or an administrative fee received to operate the program are as follows:

State/Agency	Ignition Interlock Installation/Administrative Fee	Fee Use
Arizona Department of	\$20 when device is installed	To operate ignition interlock

Transportation		program
Connecticut Department of Motor Vehicles	\$100 paid before ignition interlock installation	For administration of ignition interlock program
Florida Department of Highway Safety and Motor Vehicles	\$12	To operate ignition interlock program
Illinois Secretary of State	\$30 per month	To offset administrative costs of Secretary of State for administering Monitoring Device Driving Permit
New Mexico MVD, Vehicle Division	From \$50 to \$100/yr. after DUI conviction per year person is required to have ignition interlock	For installation, removal of ignition interlock devices for indigents.
Tennessee Department of Safety, Highway Patrol Division	Installation fee charged by installers shall not exceed \$150 Annual administrative fee of \$12.50 from user	Administrative fee to Department of Safety to fund administrative costs for ignition interlock compliance.
Washington State Department of Licensing (WSDOL)	\$10 per device for installation and \$10 fee bi-monthly per device.	Installation fee offsets WSDOL's expenses for tracking installed interlocks, supplements costs for indigent interlock users. Fee waived for persons approved under indigent program. \$10 bimonthly fee is for interlock certification, monitoring, and regulatory services.

**6. Statement of the probable effect on state revenues:**

The ignition interlock device installation fee is deposited in the Department's ignition interlock device fund that is used to pay for the program costs. Since the fee is not deposited in the general fund, the fee does not increase state general fund revenue.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

See 5(c)

**C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

None



# Arizona Ignition Interlock Proposed Rulemaking

## Comments

Submitted: February 4<sup>th</sup>, 2020

On behalf of Consumer Safety Technology, LLC d/b/a Intoxalock, thank you for the opportunity to comment on Arizona's proposed changes relating to ignition interlock devices. Intoxalock is certified as an ignition interlock provider in 46 states and has been an ignition interlock provider for over 25 years. Intoxalock is currently a certified ignition interlock provider in Arizona.

Below you will find Intoxalock's comments on the proposed rules, redlined suggested changes for specific sections (if applicable), and the rationale for the recommended changes.

Should you have questions, or need additional information, please contact Jake Heard, Attorney and Legislative Analyst, at [jheard@intoxalock.com](mailto:jheard@intoxalock.com) or at 515-270-4937.

Respectfully Submitted,

**Jake Heard**

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## Comments

For these comments, the term "manufacturer" is intended to capture both manufacturers and ignition interlock service providers. The term "customer", "individual", or "program participant" is intended to capture any person subject to a required ignition interlock period.

### 1. Amend Rule R17-5-601 ("Early Recall") & R17-5-603(i)(7) as follows:

"Early recall" means that the person's ignition interlock device recorded one tampering or circumvention event, any ignition interlock malfunction, or any four valid reportable violations between accuracy check appointments calibrations, that requires a person to return to a service center within 72 hours.

7. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, for one instance of tampering or circumvention, or any ignition interlock device malfunction, or any four valid reportable violations occurring between a person's accuracy check appointments calibrations, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the ISP in 72 hours for a violation reset.

### Recommendation & Rationale

It is recommended that the definition of "early recall" in these proposed rules use the term calibration instead of accuracy check. Calibration is already a defined term in R17-5-601 and would provide a more concise definition.

It is also recommended that appointments be stricken from this definition. Even though someone has an appointment to get a calibration does not necessarily mean that they will in fact have their device calibrated on that day due to an illness, forgetfulness, miscommunication, etc.... There is a requirement for individuals to comply with regularly scheduled calibration checks under A.R.S 28-1461, but there are legitimate reasons why someone may not be able to make to any scheduled appointment. If appointments is stricken, the four violations that require the device to go into an early recall must occur between actual calibrations, regardless of whether that calibration occurred at their first scheduled appointment or their fifth scheduled appointment. This question illustrates the needs for this technical change: Would a device be required to go into an early recall if the participant never schedules a calibration appointment?

The recommendation for R17-5-603(i)(7) is a corresponding change that would be required if the proposed definition of "early recall" is changed as recommended in these comments.



## 2. Amend Rule R17-5-604(E)

A person whose CIID was installed prior to July 1, 2018, ~~and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly,~~ shall keep the CIID on the person's vehicle. that does not meet all the requirements of Subsection (D) shall promptly return to the person's IISP to exchange the CIID for a CIID that meets all of the requirements of Subsection (D) at either of their next two planned calibrations after the effective date of this rule, unless the device has entered an early recall. If the device has entered an early recall, the CIID shall be shall be exchanged at their next violation reset calibration.

### Recommendation & Rationale

It is recommended that individuals have two calibration periods in which to exchange old CIID for a CIID that has the camera, GPS and real time reporting capabilities, unless the device has entered an early recall.

First, there will be more regulatory certainty for affected industry members, ignition interlock participants, and regulators. The term "promptly" is an imprecise term that could mean many different things, depending on the circumstances. Does promptly mean immediately after the rules go into effect? Does promptly provide a participant a reasonable amount of time depending on their circumstances? Does promptly permit someone to wait until their next scheduled calibration? What if someone had their device calibrated the day before the rules go into effect? Providing a hard timeline to have devices exchanged will let everyone involved know what their exact obligations will be and can provide a designated window of time to comply.

Second, requiring the exchange of CIIDs be done at the individual's calibration will reduce the burden on customers and manufacturers. Customers currently have to appear at a service center for regularly scheduled calibrations. By tying the CIID exchange to the calibration, customers will not have to make a special trip to a service center that they otherwise would not have made. Service centers are also accustomed to the regular calibration schedule that has already been established for existing customers. Depending on the ultimate deadline established for CIID exchanges, service centers may have to adjust their normal schedules to accommodate the exchanges.

Manufacturers will be responsible for ensuring there is a sufficient supply of CIIDs, shipping the CIIDs, and ensuring customers have work orders to schedule appointments with a service center scheduling appointments to exchange the CIIDs with the service center. If the exchange is tied to the calibration, manufacturers will have a better idea of when customers will be exchanging CIIDs and can better organize a plan of action to fulfill the new requirement. If the exchange is not tied to the customer's calibration, every customer could potentially request an exchange in the same week, which could impose a significant burden on every aspect of a manufacturer's operation.

Third, allowing two calibration periods will ensure that service centers are not overloaded with exchanges and can handle the demand. It takes approximately one and one-half hours to two hours to remove a CIID and install a new CIID. Depending on the locations of customers and how many service centers are available in the area, there may not be enough time available to get every customer



switched within one calibration period (77-90 days). Providing certainty around the deadline by which individuals have to complete the exchange will also allow service centers to plan their technician hours to ensure they have enough technicians to meet the demand.

Lastly, allowing two calibration periods will not require individuals who have fewer than 144-180 days remaining of their required ignition interlock period to have their device exchanged. Because all new CIIDs installed on or after July 1, 2018 were required to comply with the camera, GPS, and real-time reporting requirements, most individuals who are still using a grandfathered device have been subject to an ignition interlock requirement for at least a year and a half and won't have much ignition interlock time remaining after this proposed rulemaking goes into effect. There are situations in Arizona where an individual could have more than a two year ignition interlock required period, but the vast majority of Arizona offenders have an ignition interlock requirement of two years or less. By allowing two calibration periods, those individuals who have less than 144-180 days remaining would have the option, but not be required to exchange their CIID for one that has a camera, GPS, and real-time reporting. Switching out CIIDs is both costly and time consuming for the customer. If a customer only has a few months of required ignition interlock time remaining, is it fair to subject them to the cost of the exchange, the \$20 installation fee, and the increased monthly cost for the enhanced CIID?

The suggested language makes an exception for those devices that have entered into an early recall due to tampering/circumvention, malfunction, or any four reportable violations (in proposed rules). One of the main purposes of real-time reporting functionality is to ensure that the appropriate monitors are notified when the monitored individual is attempting to drive with alcohol in their system without having to wait until the device's next calibration. Forcing individuals who have entered an early recall to exchange their old device to a device with real-time reporting will provide monitors the timely reporting going forward on individuals who are still attempting to drive with alcohol in their system, while not punishing individuals who have truly changed their behavior and are near completion of their required ignition interlock period.

In the alternative, if the first recommendation is not accepted, Intoxalock would recommend a hard date by which individuals would have to exchange old CIIDs, such as July 1, 2020 for example. Providing a date by which individuals must have their device exchanged would still provide clarity for all interested parties, but would not address some of the other benefits of tying the exchange to a calibration and allowing for two calibration periods.

### **3. Amend Rule R17-5-610(F)**

F. Reportable Activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours, as service permits :

**Recommendation & Rationale**



It is recommended that "as service permits" be added to the additional language.

Adding "as service permits" will provide consistency between this new language and the current definition of "real-time" or "real-time reporting" which has the condition "as electronic or digital service permits". Additionally, this recommendation will address the situation where the device is unable to communicate with a satellite or cell phone tower such as when someone has parked in an underground parking garage.

#### 4. Amend Rule R17-5-609(L), if necessary

L. A manufacturer shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:

1. Operating a motor vehicle equipped with the CIID;
2. Cleaning and caring for the CIID; and
3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID; and
4. How to properly take a valid and substantiated rolling retest.

#### Recommendation & Rationale

The R17-5-609 in the current effective rules has the word manufacturer at the beginning of the subsection (L), however these proposed rules only have the letter "n". I do believe this is just a scrivener's error, but wanted to point it out to prevent that error from being in the adopted rules.

Intoxalock has no concern with addition of the requirement to include "How to properly take a valid and substantiated rolling retest" in the reference and problem solving guide.

#### 5. Question and Potential Recommendation regarding R17-5-609(D)(11), R17-5-610(G), & R17-5-610(K)(4)

R17-5-609(D)(11) requires IISPs to inform a customers that they cannot avoid a rolling retest requirement by leaving the motor vehicle when a rolling retest is requested, and R17-5-610(G) explicitly states that a customer cannot avoid the rolling retest by leaving the vehicle. R17-5-610(K)(4) requires a manufacturer to immediately contact the Department if the manufacturer finds that a report indicates submission of an extension of a person's ignition interlock period or a violation to the Department when a person was not in the vehicle to take the rolling retest.

The other three conditions that would require a manufacturer to contact the Department under R17-5-610(K)(4) relate to reasons why the violations cannot be relied upon to extend the individual's ignition interlock period (mechanical failure of the CIID, obvious errors in the CIID data, obvious errors in the

transmission of CIID data). Because of this fact, it raises the question on whether an individual would be able to avoid rolling retest requirement by leaving the vehicle. The rest of the rulemaking addressing this subject makes it pretty clear that someone does not avoid the rolling retest requirement by leaving their vehicle, however, a manufacturer is required to immediately notify the Department if a violation report does contain an instance where a person was not in the vehicle to take the rolling retest. If the failure or refusal to take a rolling retest is a violation, regardless of whether the person was in the vehicle or not, why would a manufacturer be required to notify the Department immediately if the person was not in the vehicle during a missed rolling retest? If the failure or refusal is not a violation, then it would make sense for the manufacturer to notify the Department immediately because the Department should not rely on the reported violations.

If the intent is to have manufacturers notify the Department when a violation is reported and the individual did not intentionally avoid the rolling retest, some additional clarity in R17-5-610(K)(4) would be recommended. Under Arizona code, a person does not commit a violation for a missed rolling retest unless they have missed three consecutive rolling retests within an 18 minute period. The only way to prove that someone intentionally avoided the rolling retest is if the individual was present for either of the first two rolling retest, and then left the vehicle for the last rolling retest prompt within the 18 minutes. If they were not in the vehicle for any of the three prompts during the 18 minute period, then it can be determined that the person did not intentionally avoid the rolling retest. If the intent of the Department is to require a manufacturer to notify the department only when an individual did not intentionally avoid a rolling retest, it is recommended that R17-5-610(K)(4) be amended as follows:

4. Submission of an extension of a person's Ignition interlock period or a violation to the Department when the digital image taken at the beginning of the first rolling retest within the 18 minute time frame, and every image thereafter during the 18 minute time frame, indicates a the person was not in the vehicle to take the rolling retest.

This language would require a manufacturer to notify the Department immediately if the violation should not be counted as a violation because the individual was not in the vehicle during the initial rolling retest request nor the subsequent retests in the 18 minute window. But it would not require the manufacturer to notify the Department if the individual intentionally avoided the rolling retest by parking, leaving the vehicle in operation, and then physically leaving the vehicle after the request for the first rolling retest occurs.

6. Amend R17-5-615 to allow utilization of GPS for the initial rolling retest as follows:

**R17-5-615. Rolling Retest; Missed Rolling Retest; Extension of Ignition Interlock Period**

- A. A manufacturer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during the time period prescribed in subsection (E).
- B. A CIID shall have the capability to require a rolling retest and meet the requirements of a rolling retest. Except as provided in subsection (K), A person shall be prompted for the first rolling retest



within five to 15 minutes after the initial test required to start an engine, and the device shall prompt for additional rolling retests at random intervals of up to 30 minutes after each previously requested and passed rolling retest.

C. A certified ignition interlock device shall:

1. Emit a warning light, tone, or both, to alert a person that a rolling retest is required;
2. Allow a period of six minutes after the warning light, tone, or both, to allow a person to take a rolling retest;
3. Require a person to perform a new test to restart an engine if it is switched off during or after a rolling retest warning;
4. Except as provided in subsection (K), allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test, except when a rolling retest is in progress;
5. Use the set point value for startups and retests;
6. Record, in its data storage system, the result of each rolling retest performed by a person during the person's drive cycle, and any valid and substantiated missed rolling retests; and
7. Immediately require another rolling retest each time a person refuses to perform a requested rolling retest.

D. Until a person successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the person to perform the requested rolling retest.

E. The Department shall count one missed rolling retest for a person who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the person providing a valid and substantiated breath sample within six minutes.

F. Failure to take a rolling retest when a person's breath alcohol concentration is equal to or exceeds the set point shall not sound the vehicle horn, nor any type of siren, bell, whistle or any device emitting a similar sound, or any unreasonable loud or harsh sound that is audible outside of the vehicle, and shall not cause the engine of the vehicle to shut off.

G. The Department shall extend a person's ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of three consecutive missed rolling retests that occur within an 18-minute time frame during a drive cycle.

H. If during one drive cycle, a person who is at least 21 years of age, has two or more breath alcohol concentrations of 0.08 or more, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.

I. If during one drive cycle, a person who is under 21 years of age, has any breath alcohol concentration one or more times, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.



J. Except as provided in subsections (H) and (I), if during one drive cycle, a person has more than one violation as defined in R17-5-601, the Department shall extend a person's ignition interlock period for six months for each violation.

K. Notwithstanding subsection (B), a manufacturer, at its discretion, may utilize a global positioning system to prompt a first rolling retest as provided in this subsection:

1. A manufacturer shall submit an application and receive Department approval prior to utilizing a global positioning system to prompt a first rolling retest

a. An application submitted pursuant to this subsection shall include any information necessary for the Department to determine whether the global positioning system can be effectively used to prompt an initial retest in accordance with this section

i. An application submitted pursuant to this subsection shall be considered a material modification under R17 -5-602, subsection J, and shall be supplemented by any additional information requested by the Department;

2. A CIID utilizing a global positioning system to prompt a first rolling retest shall:

a. Utilize a global position system only to prompt a first rolling retest in accordance with this subsection

b. Be designed and programed to prompt a first rolling retest using a timer as provided in subsection (B) if the global position system malfunctions, fails, loses signal with the satellite, or is otherwise unable to prompt the first rolling retest as required in this subsection.

c. Not allow a free restart, unless a passing breath sample was provided for the first rolling retest during a drive cycle

d. Prompt the initial rolling retest upon the global positioning system detecting the motor vehicle is in motion, unless the first rolling retest would not have been prompted using a timer pursuant to subsection (B) at the time the global positioning system detected the motor vehicle is in motion

i. If, at the time the global position system detects the motor vehicle is in motion, the first rolling retest would not have been prompted using a timer pursuant to subsection (B), the first random retest shall be prompted at the time required pursuant to subsection (B)

e. Prompt the first rolling retest 30 minutes after the initial test required to start the motor vehicle if a first rolling retest has not been prompted by the global positioning system detecting the motor vehicle is in motion pursuant to R17-5-615(K)(2)(d) or using a timer



pursuant to subsection (B) through the operation of R17-5-615(K)(2)(b) or R17-5-615(K)(2)(d)(i).

i. If a first rolling retest is prompted pursuant to this lettered subparagraph (e), the CIID shall prompt subsequent rolling retests at random intervals up to 30 minutes after each previously requested and passed rolling retest

#### **Recommendation & Rationale**

Intoxalock's compliance department is aware of rolling retest violations being reported to the Department when the program participant was not actually in the vehicle during the prompts for the rolling retest. In order to try and eliminate a substantial portion of those empty seat rolling retests violations, Intoxalock is proposing the language above in order to have the ability to utilize GPS technology to delay the initial rolling retest up to a total of 30 minutes if the GPS does not detect the vehicle is in motion. Utilizing GPS in this manner would only be allowed after submitting an application and receiving Department approval.

This proposed language would only apply to the initial rolling retest and would not permit GPS to be used for subsequent rolling retests. The vast majority of empty seat missed rolling retests are likely to be the initial rolling retest because individuals are starting their vehicle and then going back into their home to let the vehicle warm up or cool down depending on the time/day. It is less likely that a program participant would leave their vehicle running for longer than the 18 minutes required before it is a violation when making deliveries, stopping at a convenience store, etc... There is potential in the future to utilize GPS to delay subsequent rolling retests, however, Intoxalock would prefer to pursue that functionality after ensuring GPS works to the Department's satisfaction for the initial rolling retest.

Under this proposed language, a CIID would be required to function how it currently functions in every respect, except that the initial rolling retest could be delayed beyond the 5-15 minutes normally permitted before a first rolling retest is prompted if the GPS has not detected motor vehicle motion during that 5-15 minute time period. The remaining paragraphs explain how this language effectuates this concept of delaying the first rolling retest based on GPS motion detection and how it would function in practical scenarios.

The GPS prompted first rolling retest would only be utilized if the vehicle has not been in motion from the time the ignition was first started to the time the first rolling retest would have been prompted utilizing the timer method found in subsection (B) of R17-5-615. If the GPS has detected motion during that time period (5-15 minutes after ignition start), the first rolling retest would be prompted at whatever time it would have prompted pursuant to subsection (B). If the GPS has not detected motion when the first rolling retest would have been prompted by the timer pursuant to subsection (B), this language would allow the device to delay the first rolling retest up to an additional 15 minutes until the GPS detects the motor vehicle is in motion. Under no circumstances would a device be permitted to delay a first rolling retest beyond 30 minutes after initial ignition start.



If the individual starts driving right away after their initial ignition start (movement detected by GPS), utilizing the timed first rolling retest (within 5-15 minutes after ignition start) is appropriate because that is when the device would prompt the initial rolling retest currently. It would not be of any benefit to require a participant to provide a passing sample to start their vehicle and then be prompted for another sample a few seconds later after they pull out of their driveway. If the participant has not begun driving their motor vehicle by the time the first rolling retest would have been prompted using the timer pursuant to subsection (B), then it is appropriate to prompt the first rolling retest upon the GPS detecting motion because the individual has delayed the first random retest beyond what is normally permitted under normal circumstances. This suggested language is only a minor exception to the way a CIID is otherwise required to function under Arizona law.

If the motor vehicle has not detected motion within 30 minutes after the initial ignition start, the device would be required to prompt for a first rolling retest at the 30 minute mark. It is unlikely that a participant would leave a motor vehicle unoccupied and running for longer than 30 minutes after an initial start, but it certainly could occur. This 30 minute absolute threshold before a first rolling retest is prompted could be changed to whatever the Department deems appropriate. If the GPS has not detected motion, the motor vehicle is not being driven. Intoxalock would recommend 30 minutes just to ensure that participants are cognizant of their IID requirements and do not avoid compliance with the rolling retest requirement since missed rolling retests are reportable activity under R17-S-610(F)(2).

The proposed language would not permit a "free restart" unless the participant actually provided a sample during the first rolling retests regardless of whether the prompt was due to the timer as provided in subsection (B), due to the GPS detecting motion, or due to the 30 minute absolute timer being reached. This requirement is necessary to ensure that a participant does not have the ability to use a free restart if they missed the 30 minute first rolling retest prompt. Because this rule has the ability to delay the first rolling retest to up to 30 minutes, allowing a free restart after a missed 30 minute first retest would permit a participant to keep their vehicle running for a long period of time without having to provide a sample.



Jane McVay <jmcvay@azdot.gov>

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## Intoxalock Rule Comments - 17 A.A.C., Article 6

1 message

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Jane McVay <jmcvay@azdot.gov>  
To: jheard@intoxalock.com

Wed, Feb 5, 2020 at 1:07 PM

Good afternoon Jake:

I received your comments yesterday to the proposed Ignition interlock rules published in the Arizona Administrative Code on December 27, 2019. Thank you for taking an interest in the rulemaking process and rules. We did not receive any oral comments at the oral proceeding yesterday. The Department will review all of the written comments on the rules and respond to them in the final rulemaking, which I will send to you.

Thank you.

**Jane McVay**  
Senior Rules Analyst  
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February 4, 2020

Jane McVay, Senior Rules Analyst  
Department of Transportation  
Rules and Policy Development  
206 S. 17th Ave., MD 180A  
Phoenix, AZ 85007

Re: Notice of Proposed Rulemaking

Dear Jane,

Thank you for the opportunity to respond to your organization's *Notice of Proposed Rulemaking* published in the Arizona Administrative Register on December 27, 2019 regarding the proposed permanent rules changes to the ignition interlock program in Arizona.

Smart Start has proposed some modifications and clarifications that we believe will increase program oversight, create standardization and enhance business practices. Our comments are attached and styled as follows:

1. Recommended additions by Smart Start are in red with underline;
2. Recommended deletions by Smart Start are in red with strike-out (e.g. ~~strike-out~~);
3. Recommendations and reasoning are applied to areas where Smart Start felt further explanation was warranted or helpful.

We applaud the state of Arizona for its desire to make programmatic improvements in the ignition interlock program and support your ongoing efforts to reduce the incidence of impaired driving.

We look forward to the opportunity to discuss this and other issues with you and your staff.

Respectfully,

*Toby Taylor*

Toby Taylor  
Vice President, Regulatory Compliance

**TITLE 17. TRANSPORTATION  
CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK  
SERVICE PROVIDERS**

**Section**

- R17-5-601. Definitions
- R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration
- R17-5-604. Ignition Interlock Device Certification; Application Requirements
- R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing
- R17-5-609. IISP and Manufacturer Responsibilities
- R17-5-610. Reporting; Reportable Activity
- R17-5-612. Records Retention; Submission of Copies and Quarterly Reports
- R17-5-614. ~~Ignition Interlock Device Installation Fee; Financial Records~~ Ignition Interlock Device Installation Fee; Financial Records
- R17-5-616. Civil Penalties; Hearing
- R17-5-621. Service Center Application

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK  
SERVICE PROVIDERS**

**R17-5-601. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorization agreement" or "agreement" means an agreement authorized by the Director that an IISP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentration.

"Bump starting" means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the termination of a manufacturer's ignition interlock device certification for ignition interlock device installation.

"Certification" means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

"Certified ignition interlock device," "CIID," or "device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications; that connects a breath analyzer to a motor vehicle's ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person's breath is below a preset level.

"Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

- The bump start of a motor vehicle with a certified ignition interlock device;
- The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;
- The introduction of an intentionally contaminated or a filtered breath sample;
- The intentional disruption or blocking of a digital image identification device;
- The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the

presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and:

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person's driving privilege and the usage or discontinuation of usage of a IID.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data logger" means the electronic record of all ignition interlock device activity during the period when the device is installed.

"Data storage system" means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

"Defective ignition interlock device" means an ignition interlock device that:

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

"Drive cycle" means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

Recommendation: Smart Start asks that you please consider the following modification:

"Dry Gas" means an ethanol-in-nitrogen dry gas that has been found to conform to the model specifications for calibrating units for breath alcohol testers published by the National Highway Traffic Safety Administration (NHTSA).

Reasoning: Smart Start supports this modification to ensure the dry gas standards used in Arizona have been evaluated by the Department of Transportation Volpe National Transportation Systems Center (VNTSC) and met the mandatory standards for calibrating units for breath alcohol testers published by the National Highway Traffic Safety Administration (NHTSA). This helps to ensure the highest quality in calibration standards possible and is a recommendation that has been adopted by numerous states.

Recommendation: Smart Start asks that you please consider the following modification:

"Early recall" means that a person's ignition interlock device recorded one tampering or circumvention event, or any ignition interlock malfunction, or any four valid reportable violations within a 90 day period beginning on the initial date of installation of the device between accuracy check appointments, that requires a person to return to a service center within 72 hours.

Reasoning: Smart Start believes this modification helps to clarify the time frame during which the reportable violations should be accumulated as "accuracy check appointments" can vary from 77 to 90 day intervals and this could allow for unintended variation in the accumulation of these violations.

Recommendation: Smart Start asks that you please consider the following modification:

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

Reasoning: Smart Start notes the statutory authority to operate a vehicle not equipped with an IID in a "substantial emergency" as defined in ARS 28-1464. We believe the context of this definition is different than the statutory provision referenced.

Recommendation: Smart Start asks that you please consider the following modification:

"Emergency situation" means a circumstance in which the person informs the IISL or IISL-certified technician that the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

Reasoning: Smart Start notes the statutory authority to operate a vehicle not equipped with an IID in a "substantial emergency" as defined in ARS 28-1464. We believe the context of this definition is different than the statutory provision referenced.

"Established place of business" means a business location that is:

Approved by the Department;

Located in Arizona;

Not used as a residence; and

Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Free restart" means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

"FTP" means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

"Global positioning system" means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

"Ignition interlock device installation fee" means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person to an IISP when a CIID is installed on, or transferred to a person's vehicle.

"Ignition interlock period" means the period in which a person is required to use a CIID that is installed on a vehicle.

"Ignition interlock service provider" or "IISP" means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

"Improper reporting" means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person's ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department's request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person;

Failure of a manufacturer to electronically send a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after installing a CIID;

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant's vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person's vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID;~~or~~

Failure of a manufacturer to validate any person's ignition interlock period extension within 10 days; or

Recommendation: Smart Start asks that you please consider the following modification

~~An Reporting an incident that occurs after the person's vehicle is turned off;~~

Reasoning: Smart Start is concerned about this requirement as we believe it could be construed to prohibit us from reporting a circumvention or tampering. We are willing to meet with you at your convenience to discuss possible solution for reporting the events considered necessary for program implementation.

Recommendation: Smart Start asks that you please consider the following modification

"Independent laboratory" means an International Organization for Standardization (ISO) 17025 certified testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

Reasoning: Smart Start supports this modification to align this section with the "Manufacturer Oversight" Best Practice Recommendation published by the American Association of Motor Vehicle Administrators (AAMVA)

"Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

"Material modification" means a change to a CIID that affects the functionality of the device.

"Missed rolling retest" means the person refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

"Mobile services" means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP's service center, that meet the requirements of R17-5-618.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

Recommendation: Smart Start asks that you please consider the following modification

"Permanent lock-out" means a feature of the CIID in which a motor vehicle will ~~accept a breath sample~~ not start until the CIID is reset by an IISP or an IISP-certified technician.

Reasoning: Smart Start supports this modification of this definition to be consistent with the Association of Ignition Interlock Program Administrators (AIIIPA) standardized definition.

"Person" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Real-time" or "real-time reporting" means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including ~~photographs~~ digital images, to the manufacturer's website for viewing by the Department without delay, as electronic or digital service permits.

Recommendation: Smart Start asks that you please consider the following modification

"Reference sample device" means a ~~pressurized cylinder device containing a dry gas~~ sample of known alcohol concentration.

Reasoning: Smart Start supports the use of dry gas only in the state of Arizona for several reasons. Wet bath simulators must be maintained at a temperature of 93.2 F or they are inaccurate. Dry gas has a significantly higher temperature operating range which makes it more conducive to Arizona's hot temperatures. Additionally, the reference value of the simulator solution changes with every test because the alcohol evaporates with each blow. Because of this, AIIIPA has published a best practice recommendation to replace the simulator a "minimum once per day or every 25 tests". This requires the technicians to track or log each sample delivered from the simulator to ensure compliance with the recommendation. For these and other reasons, several states now prohibit the use of wet bath simulators to calibrate ignition interlock devices.

Recommendation: Smart Start asks that you please consider the following modification

"Reference value" means the known and correct alcohol concentration of the Dry Gas ~~alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of a CIID.~~

Reasoning: Smart Start modified this definition to mirror the use of dry gas only. Additional modifications have been proposed in R17-5-603 (D) to ensure the accuracy and traceability of the dry gas standard.

"Retest set point" has the same meaning as set point.

"Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

"Service center" means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

"Set point" means an alcohol concentration of 0.020 g/210 liters of breath. ~~The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters.~~

"Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

"Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

Recommendation: Smart Start asks that you please consider the following modification:

"Temporary lock-out" means a feature of the CIID which will not accept ~~flow a breath sample~~ allow a breath sample for vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

Reasoning: Smart Start supports this modification of this definition to be consistent with the Association of Ignition Interlock Program Administrators (AIIPA) standardized definition and the modified definition of permanent lock-out above.

"Vehicle identification number" or "VIN" means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

"Violation" (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

Circumventing the CIID as defined in R17-5-601;

Tampering with the CIID as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4);

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age;

Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person's drive cycle;

Disconnecting or removing a CIID, except:

On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or

On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Violation reset" means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

**R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration**

- A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.
- B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.

Recommendation: Smart Start asks that you please consider the following modification:

- D. All devices shall ~~meet the setpoint requirements of R17-5-601 when used at ambient temperatures of 20° Celsius to 82° Celsius and~~
  1. ~~Be calibrated to have an accuracy that is within plus or minus 0.005g/210L of the reference value, when used at ambient temperatures of 20 degrees Celsius to 82 degrees Celsius;~~
  2. ~~Use a reference sample device that is NIST traceable with a reference value between .020 g/210L and .050g/210L, adjusted for the elevation at which the reference sample device is being used,~~
  3. ~~Is accompanied by a Certificate of Analysis (COA), and~~
  4. ~~Is removed from service when the cylinder pressure drops below 50 PSI.~~

Reasoning: Smart Start supports these modifications to align these requirements with the "BAIID Calibration Best Practices" and "Service Center Inspection Best Practices" published by the Association of Ignition Interlock Program Administrators (AIIPA) to help ensure accuracy and precision in the calibration process.

- E. A device shall be designed so that anticircumvention features will be difficult to bypass.
  1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
  2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in realtime from the device and transmit daily to the Department, a person's ignition interlock activity in an FTP batch file.

Recommendation: Smart Start asks that you please consider the following modification:

- G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal operation of the vehicle or be located in the handset of the device, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.

Reasoning: Smart Start supports the State's position on distracted driving and believes a device in which the camera is in the handset blocks or hinders the driver's field of vision because the handset must be held in a horizontal position for the camera to capture a digital image of the driver's compartment. Additionally, the camera does not capture a digital image of the driver's

compartment unless it is being held up and positioned in such a manner as to capture that area. This lends itself to inconsistent views and image captures

11. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
  1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file;
  2. A clear ~~photograph~~ digital image shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
  3. Each ~~photograph~~ digital image shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
  4. The camera shall produce a digital image, ~~identifiable verification, or a photograph~~ of the person in all lighting conditions, including brightness, darkness, and low light conditions.
- I. A device shall:
  1. Automatically purge alcohol before allowing analysis.
  2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person's daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person's calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.
  3. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware shall:
    - a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
    - b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).

*Recommendation:* Smart Start asks that you please consider the following modification

~~4. Record all emergency by-passes in its data storage system.~~

*Reasoning:* This language is no longer necessary if the definition of this term is deleted as proposed.

- ~~5.1~~ Provide a visual reminder on the device that a calibration check must be performed on the person's IID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
  - a. The device needs service; and
  - b. The time remaining until a permanent lock-out occurs.
- ~~6.5~~ Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.

*Recommendation:* Smart Start asks that you please consider the following modification

~~7.6. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, for one instance of tampering or circumvention, or any ignition interlock device malfunction, or any four valid reportable violations within a 90 day period beginning on the initial date of installation of the device occurring between a person's accuracy check appointments, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.~~

*Reasoning:* Smart Start believes this modification helps to clarify the time frame during which the reportable violations should be accumulated as "accuracy check appointments" can vary from 77 to 90 day intervals and this could allow for unintended variation in the accumulation of these violations. See also the proposed modified definition of "Early Recall".

- ~~8.7~~ Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
  - ~~8.8~~ When a violation results in a permanent lock-out mode, the device shall:
    - a. Immobilize the person's vehicle;
    - b. Uniquely record the event in the data storage system; and
    - c. Require a violation reset by the IISP.
  - ~~10.9~~ Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.
  - ~~10.10~~ After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
  - ~~12.11~~ Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.
- J. No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
- I. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.

2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.

**R17-5-604. Ignition Interlock Device Certification; Application Requirements**

- A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
- B. To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
  1. The manufacturer's name;
  2. The address of the manufacturer's principal place of business in this state and telephone number;
  3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
  6. The manufacturer's electronic mail address.
  7. The following statements, signed by the manufacturer:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
    - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
      - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized HISP relating to the installation and operation of the ignition interlock device; and
      - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
    - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
    - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
  1. A document that provides a detailed description of the ignition interlock device and a ~~photograph~~ digital image, drawing, or other graphic depiction of the device;
  2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;

**Recommendation:** Smart Start asks that you please consider the following modification

3. Written documentation of the manufacturer's certification to the current International Organization for Standardization (ISO) 9001 Quality Management System (QMS) for aspects related to construction, production and repair of a device.
  - a. All existing state certified manufacturers shall apply for an accredited ISO 9001 certification no later than July 1, 2020, and successfully obtained by January 1, 2021. All new manufacturers applying for certification shall obtain an accredited ISO 9001 certification prior to application.

**Reasoning:** Smart Start supports this "Manufacturer Oversight" Best Practice Recommendation of the American Association of Motor Vehicle Administrators (AAMVA). This is an internationally recognized set of standards that helps organizations ensure they meet customer and other stakeholder needs within statutory and regulatory requirements related to a product or service. Several states now require this and the timeline allotted for certification is consistent with language in other states.

- 2.4. An independent laboratory's report for each device model that:
  - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
  - b. Provides the independent laboratory's name, address, and telephone number; and
  - c. Provides the name and model number of the ignition interlock device tested.
- 4.3. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3), that states all of the following:
  - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists.
  - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
  - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
  - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.
  - e. The laboratory presented accurate test results to the Department.
- 5.6. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
  - a. A product liability policy with a current effective date;

- b. The name and model number of the ignition interlock device model covered by the policy;
  - c. Policy coverage of \$1,000,000 and \$3,000,000 in the aggregate;
  - d. The manufacturer as the insured and the state of Arizona as an additional insured;
  - e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
  - f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.
4. A statement that the ignition interlock device has a camera, includes a global positioning system, and provides real-time reporting.
- D. ~~Beginning on July 1, 2018, for~~ For any new installation of an certified ignition interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified ignition interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

Recommendation: Smart Start asks that you please consider the following modification.

- E. ~~A person whose CHD was installed prior to July 1, 2018, and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly, shall keep the CHD on the person's vehicle, that does not meet all the requirements of Subsection (D) shall promptly return to the person's IISP to exchange the CHD for a CHD that meets all the requirements of Subsection (D) within 30 days of the effective date of these rules.~~

Reasoning: Smart Start believes this modification is necessary to clarify the expectation and avoid confusion for both the manufacturers and participants as to the time frame for transition.

**R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing**

- A. An application for certification of an ignition interlock device model is complete when the Department receives:
- 1. From the manufacturer, a properly prepared application form;
  - 2. From the manufacturer, all additional items required under R17-5-604(C);
  - 3. From the Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets or exceeds the NHTSA specifications in R17-5-604(C); and
  - 4. From the manufacturer, a letter or notification that the device meets the following standards:
    - a. The anticircumvention features in R17-5-603(E).
    - b. The data storage capacity requirement in R17-5-603(I)(2), and
    - c. The constant communication requirement in ~~R17-5-610(P)~~ R17-5-610(O).

Recommendation: Smart Start asks that you please consider the following modification

5. ~~From the manufacturer, documentation demonstrating certification to the current International Organization for Standardization (ISO) 9001 Quality Management System (QMS) for aspects related to construction, production and repair of a device.~~

Reasoning: Smart Start believes this modification is necessary, in accordance with the proposed modification to R17-5-604 (C) (3)

- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:
- 1. The design, material, or workmanship is defective, causing the ignition interlock device model to fail to function as intended;
  - 2. The manufacturer's product liability insurance coverage is terminated or canceled;
  - 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  - 4. The manufacturer or the independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
  - 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C), the requirements in this Article; or
  - 6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

**R17-5-609. IISP and Manufacturer Responsibilities**

- A. An IISP shall refer a person only to the IISP's certified technician.
- B. An IISP shall provide the Department and each person with a toll-free telephone number to call to obtain the names and phone numbers of the IISP's certified technicians, the IISP service center locations, and hours of operation for the IISP service centers.
- C. An IISP shall certify each technician by providing adequate training and oversight for the technician to perform one of the activities at a service center, which are installation, inspection, calibration, service, or removal of a CHD.

- D. An IISP shall provide to every person operating a motor vehicle equipped with a CIID, and any other persons who will operate the motor vehicle, training on how to operate the motor vehicle. An IISP shall instruct the person on all of the following:
1. How to use the system;
  2. How to obtain service for the CIID;
  3. How to find answers to any additional questions;
  4. How the alcohol retest feature works;
  5. How drinking alcohol before a test may result in a reading of sensitive or fail;
  6. How the CIID shall not be removed, except by an IISP or IISP-certified technician;
  7. How noncompliance with a regularly scheduled calibration check for a person with a limited or restricted driving privilege shall result in suspension of the person's driving privilege under A.R.S. § 28-1463 until proof of compliance is submitted to the Department under A.R.S. § 28-1461, and the duration of the person's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
  8. What the penalties are for circumvention of the CIID;
  9. What the penalties are for tampering with, or misusing the CIID;
  10. What will happen after failing a start-up breath alcohol test;
  11. What will happen after a person has a set of three consecutive valid and substantiated missed rolling retests within an 18-minute time frame during a drive cycle; and that a person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; or by keeping the motor vehicle in operation while the vehicle is parked, and leaving the vehicle when a rolling retest is requested;
  12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
  13. How to provide a properly delivered alveolar breath sample.
- E. An IISP shall have each person sign a document stating that the IISP has instructed the person regarding each topic contained in subsections (D) and (L), and has received the manufacturer's written instructions for operation of the CIID.
- F. An IISP shall inform a person that a compliance check on a CIID is required 30 days and 60 days after installation of the device, which shall be done electronically.
- G. An IISP shall inform each person to bring the vehicle to a service center for a calibration check within every 77 to 90-day period until the person is eligible for device removal.
- H. An IISP shall check each CIID for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each person's calibration check at a service center as required under R17-5-706.
- I. An IISP shall ensure that the manufacturer reports to the Department electronically under R17-5-610 if any evidence of tampering is discovered, and the manufacturer shall submit valid and substantiated proof of evidence of a reportable activity. An IISP shall keep visual evidence of a person's tampering or circumvention for a minimum of three years after the termination of the person's required ignition interlock period.
- J. An IISP shall submit to the Department a list of the IISP-certified technicians, subcontractors, or agents, and service centers at the beginning of the contract with the Department, within 5 business days of making a change to the list previously provided, and on a monthly basis as requested by the Department.
- K. An IISP shall comply with the provisions of this Article and A.R.S. Title 28, Chapter 4, Article 5.
- L. A n shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:
1. Operating a motor vehicle equipped with the CIID;
  2. Cleaning and caring for the CIID; ~~and~~
  3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID; ~~and~~
  4. How to properly take a valid and substantiated rolling retest.
- M. A manufacturer shall notify the Department within 10 days of a change of address of its principal place of business in this state.
- N. A manufacturer or an IISP shall provide a warning label, for each CIID installed, which shall have an orange background and shall include the following:
1. Be a minimum size of two inches by one inch;
  2. Be printed in a minimum of nine-point font;
  3. Be printed in Arial font, or a font of substantially similar size and legibility; and
  4. Contain the words in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- O. A manufacturer shall ensure that the IISP or the IISP-certified technician affixes conspicuously and maintains on each installed CIID the warning label described under subsection (N), which can be affixed to the device or to the device's cord.
- P. A manufacturer shall develop written instructions for the installation and removal of an ignition interlock device from a motor vehicle.
- Q. While a person maintains a functioning CIID in a vehicle under A.R.S. Title 28, Chapter 4, Article 5, the ignition interlock manufacturer shall electronically provide to the Department and transmit daily to the Department information and reports prescribed in R17-5-610 and R17-5-615.
- R. The manufacturer is responsible for overseeing any agents or subcontractors, including vendors and distributors, as well as overseeing the manufacturer's IISP to ensure adherence to all performance standards.

#### **R17-5-610. Reporting; Reportable Activity**

- A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.
- C. Certified ignition interlock device installation verification.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.

2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Report type;
    - h. Technician identification number;
    - i. A unique identification number for the CIID;
    - j. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
    - k. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- D. Certified ignition interlock device calibration check.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
  2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means, which shall include:
    - a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any ~~photographs~~ digital images of the person; and
    - b. A data logger that shows at least 12 hours of data before and after the violation.
  3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means, which may include:
    - ~~a. Photographs;~~
    - ~~b. Video recordings;~~
    - ~~b. Written statements; and~~
    - ~~c. Any other evidence relevant to a violation.~~
  4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Report type;
    - h. Missed rolling retest count, dates, and times;
    - i. Technician identification number;
    - j. Alcohol concentration violation count, dates, time, and alcohol concentration;
    - k. Tampering violation count, dates, and time;
    - l. Circumvention count, dates, and time;
    - m. Device download date;
    - n. Device download time;
    - o. Bypass code indication, date, and time;
    - p. A unique identification number for the CIID;
    - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
    - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- E. Certified ignition interlock device removal report.
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report type;
    - i. Technician identification number;
    - j. A unique identification number for the CIID;
    - k. The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
    - l. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
    - m. Missed rolling retest count, dates, and times;
    - n. Device download date; and

- o. Device download time.
- F. Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours:
1. Tampering with a CIID as defined in A.R.S. § 28-1301;
  2. Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an ~~18-minute timeframe~~ time frame during a person's drive cycle;
  3. Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
  4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
  5. Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age;
  6. Circumvention of a CIID as defined in R17-5-601; or
  7. Disconnecting or removing a CIID, except:
    - a. On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or
    - b. On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

Recommendation: Smart Start asks that you please consider the following modification

- G. A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition while a rolling retest is in progress, or by keeping the motor vehicle operating while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).

Reasoning: Smart Start is concerned about this requirement as we believe an internal conflict is created. We are unsure of the desired outcome with the proposed language, but believe the modification makes the language consistent with the behavior of the device. We are willing to meet with you at your convenience to discuss possible solution for reporting the events considered necessary for program implementation.

- H. A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.
- I. A manufacturer shall ensure that a CIID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by these rules.
  - J. A manufacturer shall review within 10 days all reports generated sent by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.
  - K. A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
    1. An obvious mechanical failure of a CIID;
    2. Obvious errors in the recorded CIID data that cannot be attributed to a person's actions; or
    3. Obvious errors in the transmission of CIID data to the Department, including misreported instances of tampering; or

Recommendation: Smart Start asks that you please consider the following modification:

~~4. Submission of an extension of a person's ignition interlock period or a violation to the Department when a person was not in the vehicle to take the rolling retest.~~

Reasoning: Smart Start is concerned this language conflicts with section G above. We are willing to meet with you at your convenience to discuss possible solution for reporting the events considered necessary for program implementation.

- L. A manufacturer shall ensure that a CIID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.
- M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.
- N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.
- O. A CIID shall have constant communication between the manufacturer's server and relay unit while the device is in use.
- P. All data, including ~~photographs~~ digital images, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

#### R17-5-612. Records Retention; Submission of Copies and Quarterly Reports

- A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CIID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a commercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.
- B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's

- ignition interlock records and provide the Department with electronic access to the records for three years.
- C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10 days after Department personnel request copies of records, including records relating to installation and operation of the CIID.
  - D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
    1. The number of CIID's the IISP currently has in service;
    2. The number of CIID's installed since the previous quarterly report; and
    3. The number of CIID's removed by the IISP since the previous quarterly report; and
    4. Other information required by the Department.
  - E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

**R17-5-614. ~~Ignition Interlock Device Installation Fee- Financial Records~~ Ignition Interlock Device Installation Fee; Financial Records**

- ~~A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.~~
- ~~B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP on ServiceArizona.com, or as specified by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.~~
- ~~C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.~~
- ~~D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.~~
- ~~E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.~~
- ~~F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.~~
- A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.
- B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP, as determined by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.
- C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.
- D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all person's with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.
- E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.
- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

**R17-5-616. Civil Penalties; Hearing**

- A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of ignition interlock data, as defined in R17- 5-601, ~~that may cause the Department to erroneously initiate corrective action against a person.~~ The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:
  1. \$100 for the first occurrence, but not to exceed \$1,000 per series of occurrences of improper reporting on a specific date;
  2. \$250 for the second occurrence, but not to exceed \$2,500 per series of occurrences of improper reporting on a specific date; and
  3. \$500 for the third or subsequent occurrence, but not to exceed \$5,000 per series of occurrences of improper reporting on a specific date.
- B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail a notice to the manufacturer ~~a notice stating~~ that civil penalties may be imposed for improper reporting. The notice shall:
  1. Specify the basis for the action; and
  2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.
- C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.
- E. Action to enforce the collection of a civil penalty assessed under subsection (A) shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in which the hearing is held. If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the director may file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

**R17-5-62L. Service Center Application**

- A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP shall submit to the Department a properly completed service center application for approval of the IISP's service centers.
- B. An IISP shall provide the following information to the Department:
  - 1 The service center name, which shall match the name on the service center;
  - 2 The business address of the established place of business of each service center or business location;
  - 3 The telephone number of each established place of business of each service center or business location;
  - 4 The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation;
  - 5 The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  - 6 The name and model number of each CIID the IISP plans to install;
  - 7 An indication of any service centers that will provide mobile services;
  - 8 Any applicable business licenses and the governmental entity; and
  - 9 The following statements signed by the IISP:
    - a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
    - b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
    - c. A statement that the IISP agrees to comply with all requirements in these rules; and
    - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- C. The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.
- D. The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
  - 1 The date of receipt is the date the Department receives the application.
  - 2 If an application is incomplete, the notice shall specifically identify the required information that is missing.
- E. An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
  - 1 After receiving all of the required information, the Department shall notify the IISP that the application is complete.
  - 2 The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.
- F. The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).
- G. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
  - 1 Administrative completeness review time frame: 10 days.
  - 2 Substantive review time frame: 30 days.
  - 3 Overall time frame: 40 days.
- H. If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- I. An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.
- J. If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.
- K. An IISP shall use this process to reapply to the Department for a service center application.

## NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

### NOTICE OF PROPOSED RULEMAKING TITLE 17. TRANSPORTATION CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

(R19-265)

#### PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R17-5-601  | Amend                    |
| R17-5-603  | Amend                    |
| R17-5-604  | Amend                    |
| R17-5-606  | Amend                    |
| R17-5-609  | Amend                    |
| R17-5-610  | Amend                    |
| R17-5-612  | Amend                    |
| R17-5-614  | Repeal                   |
| R17-5-614  | New Section              |
| R17-5-616  | Amend                    |
| R17-5-621  | Amend                    |
- 2. Citations to the agency's rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. §§ 28-366, 28-1462, and 28-1465  
 Implementing statute: A.R.S. §§ 28-1301, 28-1461 through 28-1469
- 3. Citations to all related notices published in R1-1-409(A) that pertain to the record of the proposed rule:**  
 Notice of Docket Opening: 25 A.A.R. 3293, November 8, 2019
- 4. The agency's contact person who can answer questions about the rulemaking:**  
 Name: Jane McVay, Senior Rules Analyst  
 Address: Department of Transportation  
 Rules and Policy Development  
 206 S. 17th Ave., MD 180A  
 Phoenix, AZ 85007  
 Telephone: (602) 712-4279  
 E-mail: [jmcvay@azdot.gov](mailto:jmcvay@azdot.gov)  
 Website: Please visit the ADOT website to track progress of this rule and any other agency rulemaking matters at <http://azdot.gov/about/government-relations/contact-us-government-relations>.
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**  
 The Department received approval to initiate this rulemaking from Ben Blink in the Governor's Office on September 20, 2019. The Department is proposing changes to the ignition interlock rules to implement rule changes recommended in a One-Year Rule Review Report approved by the Governor's Regulatory Review Council on August 6, 2019, that improve, clarify, and update the ignition interlock program. The Department filed exempt rules with the Office of the Secretary of State that became effective on July 1, 2018, to implement legislative changes relating to the operation of the ignition interlock program contained in Chapter 105, Laws 2018 and Chapter 331, Laws 2017. These rules included establishing an ignition interlock device installation fee that is payable by an ignition interlock user when an ignition interlock device is installed on a user's vehicle. In order to comply with A.R.S.

§ 41-1008(E), the Department is required to go through the regular rulemaking process to continue charging this fee. The 2018 rules provided that for ignition interlock users who had an ignition interlock device installed after July 1, 2018, the device must be capable of wireless transmission, have a camera, and meet additional requirements. These rules require those ignition interlock device users with ignition interlock devices previously installed, that do not meet these requirements, to promptly return to an ignition interlock service provider to obtain a device that meets these requirements. The rules also clarify the time period when a manufacturer must submit an ignition interlock installation report to the Department, distinguish device accuracy from calibration, correct a citation error, and make other program improvements.

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

The Department did not review or rely on any studies for this rulemaking.

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

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact;**

Clarification of the improper reporting definition and the requirement for an ignition interlock service provider to send the Department notification of a device installation within 24 hours, are expected to result in more accurate and timely reporting of individual ignition interlock activity, which benefits ignition interlock users.

In 2018 the rules established an ignition interlock device installation fee of \$20 payable by an ignition interlock user beginning July 1, 2018, when a device was installed on a user's vehicle. This fee will be paid to a user's ignition interlock service provider by approximately 20,000 Arizona drivers annually, who have an ignition interlock requirement. The fee is transmitted monthly to the Department and is estimated to generate approximately \$400,000 annually, which funds the administrative costs of the ignition interlock program. The ignition interlock device installation fee is the only fee that an ignition interlock user pays to the Department. The fee was established to impose the least cost possible to fully support the ignition interlock program. Beginning July 1, 2018, for any new installation of an ignition interlock device or device replacement, an ignition interlock service provider must install a device that has global positioning system software, has wireless capability, and contains a camera. Users whose device was installed before July 1, 2018 were not required to have a new device installed as long as a user's device operated properly and met federal requirements. The proposed rules require that those users must obtain a new device from the user's ignition interlock service provider that meets all the rule requirements. Those ignition interlock users that obtain a new device are subject to the ignition interlock device installation fee of \$20 established in an exempt rulemaking in 2018. Due to extensive changes in the Department's information and payment processing system, ignition interlock service providers are directed to electronically remit installation fees in the manner determined by the Department.

The rules also make other clarifying changes to improve the rules and comply with the legislative changes. The Department anticipates that there will be an economic impact on ignition interlock businesses. Although the number of old ignition interlock devices will continue to drop as those users come to the end of their ignition interlock period, over 2,100 participants had an old device as of September 2019. The number of old devices ranged from 12 for one manufacturer to 588 for another manufacturer. Ignition interlock device manufacturers will need to make available an adequate number of ignition interlock devices to ignition interlock service providers that meet the device requirements in the rules to replace old devices. Ignition interlock service providers will incur costs to purchase and install the new devices on user vehicles. The manufacturer will bear the cost of the new devices, including production, purchasing, and distribution costs. A manufacturer will also be required to include information in the reference guide for new users about how to properly take a valid rolling reset. The rules clarify that a manufacturer must submit reportable activity and device installation records to the Department in real-time within 24 hours. The rules expand the early recall provisions for persons with four reportable violations between accuracy appointments, requiring those persons to return to an ignition interlock provider's service center to reset the ignition interlock device. It is expected that a service provider will charge a user for a violation reset as an indirect impact of the rule changes. Manufacturers will also incur increased costs to reprogram ignition interlock devices to expand the early recall. The rules expand improper reporting to include failure of a manufacturer to validate any ignition interlock period extension within 10 days.

The Department has 9 manufacturers that have certified an ignition interlock device and 8 ignition interlock service providers. Most of the ignition interlock service providers are large businesses that design, construct, and produce an ignition interlock device. Many of these service providers offer ignition interlock services to users in numerous states, however, several providers may fall under the definition of a small business.

The rules implement legislative changes and changes recommended in the One Year Rule Review Report approved by GRRC. Implementing the ignition interlock device installation fee for users with old devices requires payment of the installation fee that supports the program. With this change, both new and continuing users pay the same fee, which supports the ignition interlock program. The fee was set to impose the least cost and burden on ignition interlock users. In addition, requiring all users to have a similar device is expected to allow more accurate oversight of ignition interlock use. Ignition interlock businesses that have contracted with the Department will incur costs to provide an adequate number of new ignition interlock devices to replace old devices and may have an increase in service calls due to early recalls. In summary, the Department believes that the rule changes benefit ignition interlock users and the general public, and that the program changes and public safety benefits greatly outweigh the cost to ignition interlock users.

**9. The agency contact person who can answer questions about the economic, small business, and consumer impact statement;**

Written comments about the economic, small business, and consumer impact statement may be submitted to the agency representative listed in item 4, and should be submitted by the close of record at 5 p.m. on February 4, 2020.

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

The Department has scheduled the following oral proceeding to obtain public comments:

Date: February 4, 2020  
Time: 1:30 p.m.  
Location: Department of Transportation  
206 S. 17th Ave. MD 180A  
Phoenix, AZ 85007  
Nature: Oral Proceeding

Written comments to the rules may be mailed or e-mailed to the agency representative listed in item 4 and may be submitted for 30 days after the publication of the proposed rules until the close of record, which will be at 5:00 p.m. on February 4, 2020. Oral comments may be made to the Department at the oral proceeding.

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, gender or disability or limited English proficiency. Persons that require a reasonable accommodation based on language or disability should contact ADOT Civil Rights at (602) 712-8946 or civilrights@azdot.gov. Requests should be made as early as possible to ensure the state has an opportunity to address the accommodation.

Personas que requieren asistencia o una adaptación razonable por habilidad limitada en Inglés o discapacidad deben ponerse en contacto con la Oficina de Derechos Civiles de ADOT al (602) 712-8946 or civilrights@azdot.gov. Las solicitudes deben hacerse tan pronto como sea posible para asegurar que el estado tiene la oportunidad de abordar el alojamiento.

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

There are no other matters prescribed by statute applicable to the Department or to any specific rule or class of rules.

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

A.R.S. § 28-1468 for the Director of the Department to issue an authorization for an ignition interlock service provider. The ignition interlock rules in 17 A.A.C. 5, Article 6 also contain a process for certifying a manufacturer's ignition interlock device. The rules do not require a general permit, but authorization and certification are general permits because the activities or practices in the class are substantially similar in nature for all ignition interlock service providers and manufacturers to perform authorized activities.

**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:**

A federal law is not specifically applicable to the rules. The rules in 17 A.A.C. 5, Article 6 incorporate by reference the 2013 NHTSA Model Specifications for Breath Alcohol Devices (BAIDs) and the 2015 NHTSA technical corrections to these specifications. A.R.S. § 28-1462(C)(4) provides that the Motor Vehicle Division shall not certify an ignition interlock device unless the device meets or exceeds the 2013 NHTSA standards.

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

The Department did not receive a business competitive analysis.

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

R17-5-604(C)(3)(a) incorporates by reference the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

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

**TITLE 17. TRANSPORTATION  
CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK  
SERVICE PROVIDERS**

Section	
R17-5-601.	Definitions
R17-5-603.	Device Requirements, Technical Specifications, and Standards for Setup and Calibration
R17-5-604.	Ignition Interlock Device Certification; Application Requirements
R17-5-606.	Application Completeness; Denial of Ignition Interlock Device Certification; Hearing
R17-5-609.	HSP and Manufacturer Responsibilities
R17-5-610.	Reporting; Reportable Activity
R17-5-612.	Records Retention, Submission of Copies and Quarterly Reports
R17-5-614.	Ignition Interlock Device Installation Fee; Financial Records; Ignition Interlock Device Installation Fee; Financial Records
R17-5-616.	Civil Penalties; Hearing
R17-5-621.	Service Center Application

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS**

**R17-5-601. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorization agreement" or "agreement" means an agreement authorized by the Director that an IISIP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentration.

"Bump starting" means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the termination of a manufacturer's ignition interlock device certification for ignition interlock device installation.

"Certification" means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

"Certified ignition interlock device," "CIID," or "device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person's breath is below a preset level.

"Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

The bump start of a motor vehicle with a certified ignition interlock device;

The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;

The introduction of an intentionally contaminated or a filtered breath sample;

The intentional disruption or blocking of a digital image identification device;

The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and,

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person's driving privilege and the usage or discontinuation of usage of a CIID.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data logger" means the electronic record of all ignition interlock device activity during the period when the device is installed.

"Data storage system" means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

"Defective ignition interlock device" means an ignition interlock device that

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

"Drive cycle" means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

"Dry Gas" means an ethanol-in-nitrogen dry gas that has been found to conform to the model specifications for calibrating units for breath alcohol testers published by the National Highway Traffic Safety Administration (NHTSA).

"Early recall" means that a person's ignition interlock device recorded one tampering or circumvention event, or any ignition interlock malfunction, or any four valid recurrent violations within a 90 day period beginning on the initial date of installation of the device between accuracy check appointments, that requires a person to return to a service center within 72 hours.

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance in which the person informs the IISP or IISP certified technician that the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

"Established place of business" means a business location that is

Approved by the Department;

Located in Arizona;

Not used as a residence; and

Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Free restart" means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

"FTT" means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

"Global positioning system" means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

"Ignition interlock device installation fee" means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person in an IISP when a CIID is installed on, or transferred to a person's vehicle.

"Ignition interlock period" means the period in which a person is required to use a CIID that is installed on a vehicle.

"Ignition interlock service provider" or "IISP" means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

"Improper reporting" means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person's ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department's request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person.

~~Failure of a manufacturer to electronically send a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after installing a CIID;~~

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant's vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person's vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID; or

~~Failure of a manufacturer to validate any person's ignition interlock period extension within 10 days, or~~

~~or reporting an incident that occurs after the person's vehicle is turned off.~~

Comment [TT3]: See authority to operate a vehicle not equipped with an IID in a "substantial emergency" in ARS 28-1464. There is no language around when or how this is to be approved or accomplished and these are 2 of the 3 references in rules to this term. The other is a requirement to record this event in the data storage system.

Comment [TT2]: Does this include a retest violation when the retest began before the vehicle was turned off and/or a circumvention and/or tampering?

"Independent laboratory" means an International Organization for Standardization (ISO) 17025 certified testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

Comment [T3]: AAMVA

"Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

"Material modification" means a change to a CIID that affects the functionality of the device.

"Missed rolling retest" means the person refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

"Mobile services" means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP's service center, that meet the requirements of R17-5-618.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Permanent lock-out" means a feature of the CIID in which a motor vehicle will accept a breath sample not later than until the CIID is reset by an IISP or an IISP-certified technician.

Comment [TT4]: AllPA standardized definition

"Person" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Real-time" or "real-time reporting" means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including photographs, digital images, to the manufacturer's website for viewing by the Department without delay, as electronic or digital service permits.

"Reference sample device" means a pressurized cylinder device containing a dry gas sample of known alcohol concentration.

"Reference value" means the known and correct alcohol concentration of the Dry Gas alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of a CIID.

Comment [TT5]: Per our conversation

"Retest set point" has the same meaning as set point.

"Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

"Service center" means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

"Set point" means an alcohol concentration of 0.020 g/210 liters of breath. ~~The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters.~~

"Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

"Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

"Temporary lock-out" means a feature of the CIID which will not accept a breath sample motor vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

"Vehicle identification number" or "VIN" means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

Comment [TT6]: AllPA standardized definition

"Violation" (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

Circumventing the CIID as defined in R17-5-601,

Tampering with the CIID as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4),

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age,

Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18 minute time frame during a person's drive cycle,

Disconnecting or removing a CIID, except:

On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or

On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Violation reset" means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

**R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration**

- A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.
- B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. All devices shall: meet the setpoint requirements of R17-5-601 ~~when used at ambient temperatures of -20°Celsius to 83°Celsius and~~
  1. ~~be calibrated to have an accuracy that is within plus or minus 0.005e/210L of the reference value, when used at ambient~~ ~~temperatures of -20 degrees Celsius to 83 degrees Celsius~~
  2. ~~Use a reference sample device that is NIST traceable with a reference value between .020 e/210L and .030e/210L, adjusted for the elevation at which the reference sample device is being used;~~
  3. Is accompanied by a Certificate of Analysis (COA), and
  - 1.4. Is removed from service when the cylinder pressure drops below 50 PSI.
- E. A device shall be designed so that anticircumvention features will be difficult to bypass.
  1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
  2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in real-time from the device and transmit daily to the Department, a person's ignition interlock activity in an FTP batch file.
- G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal operation of the vehicle or be located in the handset of the CIID, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.
- H. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
  1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file.
  2. A clear-photograph digital image shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
  3. Each-photograph digital image shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
  4. The camera shall produce a digital image, identifiable verification, or a photograph of the person in all lighting conditions, including brightness, darkness, and low light conditions.
- I. A device shall:
  1. Automatically purge alcohol before allowing analysis
  2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person's daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person's calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.
  3. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware shall:
    - a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
    - b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).
  4. Record all emergency bypasses in its data storage system.
  - 5.4. Provide a visual reminder on the device that a calibration check must be performed on the person's CIID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
    - a. The device needs service; and
    - b. The time remaining until a permanent lock-out occurs.
  - 6.5. Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.
  - 7.6. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, for one instance of tampering or circumvention, or any ignition interlock device malfunction, ~~or any four valid retestable violations within a 90-day period beginning on the initial date of installation of the device occurs between a person's accuracy check appointments,~~ emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.
  - 8.7. Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
  - 9.8. When a violation results in a permanent lock-out mode, the device shall:

Comment [TT7]: Per our discussion

Comment [TT8]: We consider this to be distracted driving

- a. Immobilize the person's vehicle;
  - b. Uniquely record the event in the data storage system; and
  - c. Require a violation reset by the IISIP.
- 10.9. Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.

- 11.10. After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
- 12.11. Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.

- J. No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
  - 1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
  - 2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
  - 3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.

**R17-5-604. Ignition Interlock Device Certification; Application Requirements**

- A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
- B. To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
  - 1. The manufacturer's name.
  - 2. The address of the manufacturer's principal place of business in this state and telephone number.
  - 3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation.
  - 4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder.
  - 5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
  - 6. The manufacturer's electronic mail address.
  - 7. The following statements, signed by the manufacturer:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct.
    - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
      - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized ISP relating to the installation and operation of the ignition interlock device; and
      - ii. All court costs, expenses of litigation, and reasonable attorneys' fees.
    - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
    - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
  - 1. A document that provides a detailed description of the ignition interlock device and a photograph, digital image, drawing, or other graphic depiction of the device.
  - 2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device.
  - 3. Written documentation of the manufacturer's certification to the current International Organization for Standardization (ISO) 9001 Quality Management System (QMS) for aspects related to construction, production and repair of a device. Along with the certification, a copy of the manufacturer's Quality Assurance Plan (QAP) for checking the accuracy of the calibration.
  - 3.4. An independent laboratory's report for each device model that:
    - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments.
    - b. Provides the independent laboratory's name, address, and telephone number; and
    - c. Provides the name and model number of the ignition interlock device tested.
  - 4.5. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3) that states all of the following:
    - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists.
    - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
    - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
    - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.
    - e. The laboratory presented accurate test results to the Department.
  - 5.6. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
    - a. A product liability policy with a current effective date;
    - b. The name and model number of the ignition interlock device model covered by the policy;
    - c. Policy coverage of \$1,000,000 and \$1,000,000 in the aggregate;
    - d. The manufacturer as the insured and the state of Arizona as an additional insured;

- e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and

f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.

6.7 A statement that the Ignition Interlock device has a camera, includes a global positioning system, and provides real-time reporting.

D. Beginning on July 1, 2018, for any new installation of an ~~approved~~ Ignition Interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified Ignition Interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

E. A person whose CIID was installed prior to July 1, 2018, and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly, shall keep the CIID on the person's vehicle, that does not meet all the requirements of Subsection (D) shall promptly return to the person's IISP to exchange the CIID for a CIID that meets all the requirements of Subsection (D).

#### R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

- A. An application for certification of an ignition interlock device model is complete when the Department receives:
1. From the manufacturer, a properly prepared application form;
  2. From the manufacturer, all additional items required under R 17-5-604(C);
  3. From the Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets or exceeds the NHTSA specifications in R 17-5-604(C), and
  4. From the manufacturer, a letter or notification that the device meets the following standards:
    - a. The anticircumvention features in R 17-5-603(E);
    - b. The data storage capacity requirement in R 17-5-603(I)(2), and
    - c. The constant communication requirement in ~~R 17-5-610(P)~~ R 17-5-610(O).
- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:
1. The design, material, or workmanship is defective, causing the ignition interlock device model to fail to function as intended;
  2. The manufacturer's product liability insurance coverage is terminated or canceled;
  3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  4. The manufacturer or the independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
  5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R 17-5-604(C), the requirements in this Article, or
  6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

#### R17-5-609. IISP and Manufacturer Responsibilities

- A. An IISP shall refer a person only to the IISP's certified technician.
- B. An IISP shall provide the Department and each person with a toll-free telephone number to call to obtain the names and phone numbers of the IISP's certified technicians, the IISP service center locations, and hours of operation for the IISP service centers.
- C. An IISP shall certify each technician by providing adequate training and oversight for the technician to perform one of the activities at a service center, which are installation, inspection, calibration, service, or removal of a CIID.
- D. An IISP shall provide to every person operating a motor vehicle equipped with a CIID, and any other persons who will operate the motor vehicle, training on how to operate the motor vehicle. An IISP shall instruct the person on all of the following:
1. How to use the system;
  2. How to obtain service for the CIID;
  3. How to find answers to any additional questions;
  4. How the alcohol retest feature works;
  5. How drinking alcohol before a test may result in a reading of sensitive or fail;
  6. How the CIID shall not be removed, except by an IISP or IISP-certified technician;
  7. How noncompliance with a regularly scheduled calibration check for a person with a limited or restricted driving privilege shall result in suspension of the person's driving privilege under A.R.S. § 28-1463 until proof of compliance is submitted to the Department under A.R.S. § 28-1461, and the duration of the person's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
  8. What the penalties are for circumvention of the CIID;
  9. What the penalties are for tampering with, or misusing the CIID;
  10. What will happen after failing a start-up breath alcohol test;
  11. What will happen after a person has a set of three consecutive valid and substantiated missed rolling retests within an 18-minute time frame during a drive cycle; and that a person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition, or by keeping the motor vehicle in operation while the vehicle is parked, and leaving the vehicle when a rolling retest is requested.

Comment [TT9]: What does this mean?  
When will these go into effect? Maybe within  
30 days of the effective date?

- 12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
- 13. How to provide a properly delivered alveolar breath sample.
- E. An IISP shall have each person sign a document stating that the IISP has instructed the person regarding each topic contained in subsections (D) and (L), and has received the manufacturer's written instructions for operation of the CIID.
- F. An IISP shall inform a person that a compliance check on a CIID is required 30 days and 60 days after installation of the device, which shall be done electronically.
- G. An IISP shall inform each person to bring the vehicle to a service center for a calibration check within every 77 to 90-day period until the person is eligible for device removal.
- II. An IISP shall check each CIID for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each person's calibration check at a service center as required under R17-5-706.
- L. An IISP shall ensure that the manufacturer reports to the Department electronically under R17-5-610 if any evidence of tampering is discovered, and the manufacturer shall submit valid and substantiated proof or evidence of a reportable activity. An IISP shall keep visual evidence of a person's tampering or circumvention for a minimum of three years after the termination of the person's required ignition interlock period.
- J. An IISP shall submit to the Department a list of the IISP-certified technicians, subcontractors, or agents, and service centers at the beginning of the contract with the Department, within 5 business days of making a change to the list previously provided, and on a monthly basis as requested by the Department.
- K. An IISP shall comply with the provisions of this Article and A.R.S. Title 28, Chapter 4, Article 5.
- L. A manufacturer shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:
  - 1. Operating a motor vehicle equipped with the CIID;
  - 2. Cleaning and caring for the CIID; and
  - 3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID; and
  - 4. How to properly take a valid and substantiated rolling retest.
- M. A manufacturer shall notify the Department within 10 days of a change of address of its principal place of business in this state.
- N. A manufacturer or an IISP shall provide a warning label, for each CIID installed, which shall have an orange background and shall include the following:
  - 1. Be a minimum size of two inches by one inch;
  - 2. Be printed in a minimum of nine point font;
  - 3. Be printed in Arial font, or a font of substantially similar size and legibility; and
  - 4. Contain the words in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- O. A manufacturer shall ensure that the IISP or the IISP-certified technician affixes conspicuously and maintains on each installed CIID the warning label described under subsection (N), which can be affixed to the device or to the device's cord.
- P. A manufacturer shall develop written instructions for the installation and removal of an ignition interlock device from a motor vehicle.
- Q. While a person maintains a functioning CIID in a vehicle under A.R.S. Title 28, Chapter 4, Article 5, the ignition interlock manufacturer shall electronically provide to the Department and transmit daily to the Department information and reports prescribed in R17-5-610 and R17-5-615.
- R. The manufacturer is responsible for overseeing any agents or subcontractors, including vendors and distributors, as well as overseeing the manufacturer's IISP to ensure adherence to all performance standards.

**R17-5-610. Reporting: Reportable Activity**

- A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.
- C. Certified ignition interlock device installation verification.
  - 1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.
  - 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Report type;
    - h. Technician identification number;
    - i. A unique identification number for the CIID;
    - j. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
    - k. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- D. Certified ignition interlock device calibration check.
  - 1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
  - 2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means, which shall include:
    - 12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
    - 13. How to provide a properly delivered alveolar breath sample.

- a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any photographs ~~digital images~~ of the person; and
  - b. A data logger that shows at least 12 hours of data before and after the violation.
3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (1), if available, within 10 days by electronic means, which may include
- a. Photographs;
  - ~~b.~~ b. Video recordings;
  - ~~c.~~ c. Written statements; and
  - ~~d.~~ d. Any other evidence relevant to a violation.
4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
- a. Department assigned service center number;
  - b. Person's full name (first, middle, last and suffix);
  - c. Date of birth;
  - d. Driver license or customer number;
  - e. Report date;
  - f. Install date;
  - g. Report type;
  - h. Missed rolling retest count, dates, and times;
  - i. Technician identification number;
  - j. Alcohol concentration violation count, dates, time, and alcohol concentration;
  - k. Tampering violation count, dates, and time;
  - l. Circumvention count, dates, and time;
  - m. Device download date;
  - n. Device download time;
  - o. Bypass code indication, date, and time;
  - p. A unique identification number for the CIID;
  - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
  - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- E. Certified ignition interlock device removal report
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
    - a. Department-assigned service center number;
    - b. Person's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report type;
    - i. Technician identification number;
    - j. A unique identification number for the CIID;
    - k. The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
    - l. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
    - m. Missed rolling retest count, dates, and times;
    - n. Device download date; and
    - o. Device download time.
- F. Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following ~~transmitted electronically and wirelessly by the manufacturer to the Department in real time within 24 hours:~~
1. Tampering with a CIID as defined in A.R.S. § 28-1301;
  2. Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute-timeframe ~~time frame~~ during a person's drive cycle;
  3. Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
  4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
  5. Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age;
  6. Circumvention of a CIID as defined in R17-5-601, or
  7. Disconnecting or removing a CIID, except:
    - a. On repair of the vehicle, if the person provided to the ISP, technician, or service center advance notice of the repair and the anticipated completion date; or
    - b. On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

- G. A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition while a rolling retest is in progress, or by keeping the motor vehicle operating while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).
- H. A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.
  - 1. A manufacturer shall ensure that a CHID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by these rules.
- J. A manufacturer shall review within 10 days all reports generated sent by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.
- K. A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
  - 1. An obvious mechanical failure of a CHID;
  - 2. Obvious errors in the recorded CHID data that cannot be attributed to a person's actions; or
  - 3. Obvious errors in the transmission of CHID data to the Department, including misreported instances of tampering, or
  - 4. Submission of an extension of a person's ignition interlock period or a violation to the Department when a person was not in the vehicle to take the rolling retest.
- L. A manufacturer shall ensure that a CHID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.
- M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.
- N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.
- O. A CHID shall have constant communication between the manufacturer's server and relay unit while the device is in use.
- P. All data, including photographs digital images, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

Comment [TT10]: What happens if they turn the car off after the rolling retest prompt and exit the vehicle?

**RI7-5-612. Records Retention; Submission of Copies and Quarterly Reports**

- A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CHID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a commercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.
- B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's ignition interlock records and provide the Department with electronic access to the records for three years.
- C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10 days after Department personnel request copies of records, including records relating to installation and operation of the CHID.
- D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
  - 1. The number of CHID's the IISP currently has in service;
  - 2. The number of CHID's installed since the previous quarterly report; and
  - 3. The number of CHID's removed by the IISP since the previous quarterly report; and
  - 4. Other information required by the Department.
- E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

**RI7-5-614. Ignition Interlock Device Installation Fee; Financial Records Ignition Interlock Device Installation Fee; Financial Records**

- ~~A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CHID that is installed in, or transferred to a motor vehicle by an IISP.~~
- ~~B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP on ServiceArizona.com, or as specified by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.~~
- ~~C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.~~
- ~~D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.~~
- ~~E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.~~
- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.
- ~~A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CHID that is installed in, or transferred to a motor vehicle by an IISP.~~

- B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP, as determined by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.
- C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.
- D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.
- E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.
- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

**RI7-5-616. Civil Penalties; Hearing**

- A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of ignition interlock data, as defined in RI7-5-601, ~~that may cause the Department to erroneously initiate corrective action against a person.~~ The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:
  1. \$100 for the first occurrence, but not to exceed \$1,000 per series of occurrences of improper reporting on a specific date;
  2. \$250 for the second occurrence, but not to exceed \$2,500 per series of occurrences of improper reporting on a specific date; and
  3. \$500 for the third or subsequent occurrence, but not to exceed \$5,000 per series of occurrences of improper reporting on a specific date.
- B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail a notice to the manufacturer—a notice stating that civil penalties may be imposed for improper reporting. The notice shall
  1. Specify the basis for the action, and
  2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.
- C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.
- E. Action to enforce the collection of a civil penalty assessed under subsection (A) shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in which the hearing is held. If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the director may file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

**RI7-5-621. Service Center Application**

- A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP shall submit to the Department a properly completed service center application for approval of the IISP's service centers.
- B. An IISP shall provide the following information to the Department:
  1. The service center name, which shall match the name on the service center;
  2. The business address of the established place of business of each service center or business location;
  3. The telephone number of each established place of business of each service center or business location;
  4. The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation,
  5. The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  6. The name and model number of each CHD the IISP plans to install;
  7. An indication of any service centers that will provide mobile services;
  8. Any applicable business licenses and the governmental entity; and
  9. The following statements signed by the IISP:
    - a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
    - b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
    - c. A statement that the IISP agrees to comply with all requirements in these rules; and
    - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- C. The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.
- D. The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
  1. The date of receipt is the date the Department receives the application.
  2. If an application is incomplete, the notice shall specifically identify the required information that is missing.
- E. An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
  1. After receiving all of the required information, the Department shall notify the IISP that the application is complete.
  2. The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.

- F. The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).
- G. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
  - 1. Administrative completeness review time frame: 10 days
  - 2. Substantive review time frame: 30 days.
  - 3. Overall time frame: 40 days
- H. If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- I. An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.
- J. If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.
- K. An IISP shall use this process to reapply to the Department for a service center application.



Jane McVay <jmcvay@azdot.gov>

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## Smart Start Rule Comments - 17 A.A.C. 5, Article 6

1 message

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Jane McVay <jmcvay@azdot.gov>

Wed, Feb 5, 2020 at 1:17 PM

To: Toby.Taylor@smartstartinc.com

Cc: Jeffrey Dolfini <jdolfini@azdot.gov>, Jackle Gentner <jgentner@azdot.gov>

Good afternoon Toby:

I received your comment submissions this week to the proposed Ignition rules published in the Arizona Administrative Code on December 27, 2019. Thank you for taking an interest in the rulemaking process and rules. The Department will review all of the written comments on the rules and respond to them in the final rulemaking, which I will send to you.

Thank you.

**Jane McVay**  
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602.712.4279  
jmcvay@azdot.gov

If the agency determines that a CPL is feasible, NHTSA will announce its intention to develop a CPL in a **Federal Register** notice and will, at that time, outline the procedures that will apply, including steps for submitting BAIIDs for compliance testing. The agency would seek to establish procedures that ensure a level playing field, in terms of competition among ignition interlock manufacturers.

Accordingly, NHTSA expects that manufacturers will continue to certify, and States and local jurisdictions will continue to determine, that BAIIDs conform to the Model Specifications essentially in the same manner that is currently being used. However, the revised Model Specifications, rather than the 1992 version, should be used, once they become effective. The Model Specifications will not take effect immediately, but rather will be delayed for one year, to provide manufacturers of BAIIDs sufficient time to make conforming modifications to their instruments and to conduct testing, as warranted.

#### F. Appendices to the 2010 Notice

The 2010 notice contained four appendices. Appendix A included submission procedures for conformance testing of BAIIDs. (75 FR 61831.) Appendix B included procedures for the re-examination of BAIIDs, which occur at the sole discretion of NHTSA. (75 FR 61831–32.) Appendix C provided a template for a Quality Assurance Plan. (75 FR 61832.) Appendix D provided a sample format for downloaded data from the interlock data logger. (75 FR 61832–33.)

As explained above, NHTSA has not yet decided whether it will develop a CPL. It will first conduct an assessment to determine its feasibility. If the agency decides that a CPL is feasible, NHTSA will publish a **Federal Register** notice announcing its plans to proceed and will, at that time, outline the procedures that will apply.

Accordingly, the first two appendices that were contained in the 2010 notice (then identified as Appendix A and Appendix B) are not included in this notice. The other two appendices that were contained in the 2010 notice (then identified as Appendix C and Appendix D) have been renamed as Appendix A and Appendix B, respectively.

### III. New Model Specifications

On October 6, 2010, NHTSA proposed revisions to the 1992 Model Specifications for BAIIDs. (75 FR 61820.) Those proposed revisions were based, in part, on input from the comments received in 2006. Today, in

response to the October 6, 2010 notice, the 1992 Model Specifications have been revised.

This Notice is not intended to take the place of any State certification requirements; rather, it provides for a voluntary testing and conformance program.

These Model Specifications do not have the force of regulations and are not binding. States and others may adopt these Model Specifications and rely on any tests that NHTSA may conduct, or they may conduct their own tests according to their own procedures and specifications.

After consideration of the comments, the Model Specifications for Breath Alcohol Ignition Interlock Devices have been revised to reflect the decisions discussed above and are set forth below.

**Authority:** 23 U.S.C. 403; 49 CFR 1.95; 49 CFR Part 501.

### MODEL SPECIFICATIONS FOR BREATH ALCOHOL IGNITION INTERLOCK DEVICES (BAIIDs)

#### A. Purpose and Scope

The purpose of these specifications is to establish recommended performance criteria and test methods for breath alcohol ignition interlock devices (BAIIDs), commonly referred to as alcohol interlocks or ignition interlocks. BAIIDs are breath alcohol sensing instruments designed to prevent the motor vehicle from starting unless the driver first provides a breath sample whose alcohol concentration is below the set point into the BAIID. If the measured breath alcohol concentration (BrAC) is at or above a set level, the vehicle will not start. BAIIDs are currently being used as court sanctions as well as administrative conditions of licensure. Drivers convicted of impaired driving may be required to use BAIIDs in their vehicle under court supervision or as part of a required path to full reinstatement of driving privileges. These specifications are intended for use in conformance testing of BAIIDs installed in vehicles. These specifications are voluntary and do not impose any compliance obligations on BAIID manufacturers or others.

#### B. Terms

**Alcohol**—Ethanol or ethyl alcohol (C<sub>2</sub>H<sub>5</sub>OH).

**Alcohol set point**—Breath Alcohol Concentration (BrAC) at which a BAIID is set to prevent a vehicle from starting.

**Breath Alcohol Concentration (BrAC)**—The amount of alcohol in a given amount of breath, expressed in weight per volume (w/v) based upon grams of alcohol per 210 liters (L) of

breath, in accordance with the Uniform Vehicle Code, Chapter 11, Section 11–903.4 and 5.<sup>1</sup>

**Breath alcohol ignition interlock device (BAIID)**—A device that is designed to allow a driver to start a vehicle if the driver's BrAC is below the set point and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point.

**Breath Sample**—Normal expired human breath primarily containing air from the deep lung.

**Calibration Stability**—The ability of a BAIID to hold its accuracy and precision over a defined time period.

**Circumvention**—An attempt to bypass the correct operation of a BAIID, whether by use of an altered breath sample, by starting the vehicle by any means without first providing a breath sample.

**Filtered air sample**—Any human breath sample that has intentionally been altered so as to remove alcohol from it.

**Interlock Data Logger**—A device within a BAIID that records all events, dates, and times during the period of installation and use of a BAIID.

**Retest**—A breath test that is required after the initial engine start-up breath test and while the engine is running. This is also referred to as a running retest.

**Service Interval**—The time period established by the State or jurisdiction that a BAIID may be used without maintenance or data download. If the device is not serviced within the period, warnings are provided and the device will prevent further operation.

**Simulator**—A device that produces an alcohol-in-air test sample of known concentration (e.g., a Breath Alcohol Sampling Simulator (BASS))<sup>2</sup> or a device that meets the NHTSA Model Specifications for Calibrating Units (72 FR 34742)).

**Tampering**—An attempt to physically disable, disconnect, adjust, or otherwise alter the proper operation of a BAIID.

#### C. General Provisions and Features of BAIIDs

Conforming BAIIDs must meet the following provisions:

The BAIID must pass each of the conformance tests 1 through 16 in Section D, unless explicitly excluded from a test by the specific terms of those specifications.

<sup>1</sup> Available from the National Committee on Uniform Traffic Laws and Ordinances, 107 South West Street, #110, Alexandria, VA 22314 (<http://www.ncutlo.org>).

<sup>2</sup> See NHTSA Special Publication 480–41, July 1981. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Installation and service of the BAIID in a vehicle must not compromise any normal function of the vehicle, including anti-theft functions, on-board computer functions, or vehicle safety features required by the Federal Motor Vehicle Safety Standards, and must not cause harm to the vehicle occupants. Care should be taken to protect against reverse polarity and damage to other circuits and to ensure that the BAIID does not drain the vehicle's battery while in sleep mode (i.e., power save mode).

The BAIID must have tamper proof seals to indicate when a BAIID has been disconnected from the ignition.

The BAIID must be capable of permitting a vehicle to start or preventing it from starting at specified breath alcohol concentrations.

The BAIID must be tested at an alcohol set point of 0.02 g/dL with a flow rate of 0.3 L/sec. Upon detecting an alcohol concentration at or above that set point, the BAIID must prevent the vehicle from starting for a period of time before another test can be performed.

If the vehicle is equipped with a remote start device, the BAIID must be installed so that the remote start function is bypassed or disabled and a valid breath test must be performed before the vehicle may be started.

If the BAIID has a removable sensing head, the BAIID may not allow the vehicle to start without use of the sensing head.

The BAIID must include clear instructions to the driver (e.g., when to blow, when to wait, when to start the vehicle, when to retest, when a lockout countdown occurs, including the time remaining before the BAIID may be used again to start the vehicle, and when to seek service).

Manufacturers must submit the operator's manual (user's guide or instructions to the user), the maintenance manual, and specifications and drawings fully describing the BAIID.

In addition, manufacturers must submit the quality assurance plan (QAP). The QAP must include the following information: instructions for checking the calibration of the BAIID (i.e., recommended calibrating unit, BrAC of 0.02 g/dL, agreement not greater than  $\pm 0.005$  BrAC, verification of accuracy of readout, actions to take for failed calibration check), instructions for downloading the data from the interlock data logger, instructions to maintain the BAIID, instructions on checking for tampering, and any other information regarding quality assurance unique to the BAIID. See Appendix A for a sample QAP template.

The design of the BAIID must include an interlock data logger that will record, at a minimum, all start attempts and outcomes, including an emergency override if applicable, delineation of calibration checks, circumvention, tampering, operator attempts to start the vehicle, and BrAC for each start attempt. The data must be presented in chronological order (i.e., by date and time of event). See Appendix B for a sample format for downloaded data from the interlock data logger. The manufacturer must provide a means of downloading the data from the interlock data logger.

Any change to a BAIID that could affect its performance, including potentially software changes, should require additional testing. The BAIID must track all changes to the metrological software and indicate the software version and date on all printed and downloaded reports. NHTSA is aware that States (and local jurisdictions) use different set points in their interlock programs, and changes to the set point, alone, would not require additional testing. The Model Specifications provide that BAIIDs are to be tested at an alcohol set point of 0.02 g/dL.

#### D. BAIID Test Procedures

##### General Test Conditions

Unless otherwise specified in a conformance test, the following conditions apply to each test:

- Number of trials at each alcohol level = 20
- Ambient temperature:  $22\text{ }^{\circ}\text{C} \pm 3\text{ }^{\circ}\text{C}$  ( $71.6\text{ }^{\circ}\text{F} \pm 5.4\text{ }^{\circ}\text{F}$ ).
- Ambient atmospheric pressure:  $97.5\text{ kPa} \pm 10.5\text{ kPa}$  (25.7 and 31.9 inches Hg).
- Sample parameters: volume 1.2 liters; ambient flow rate 0.3 Liters per second; maximum delivery pressure 2.5 kPa; temperature  $34\text{ }^{\circ}\text{C}$  ( $93.2\text{ }^{\circ}\text{F}$ )
- Simulated breath samples will be generated by the BASS<sup>3</sup> or by a wet bath type calibrating unit that is listed on the NHTSA Conforming Products List for such devices. Solutions used in the calibrating device will be prepared as described in the NHTSA Model Specifications for Calibrating Units published June 25, 2007 (72 FR 34742).

##### Performance Requirements

Unless otherwise specified in a conformance test, the BAIID must meet the following performance requirements in each test:

- Tests at 0.000 g/dL BrAC: the vehicle must not be prevented from starting during 20 trials.
- Test at 0.008 g/dL BrAC: the vehicle must not be prevented from starting more than once during 20 trials.
- Tests at 0.032 g/dL BrAC (grams alcohol/210 liters of air): the vehicle must not start more than once during 20 trials.
- A BAIID must be ready for use 3 minutes or less after it is turned on. A BAIID must be ready for a second test within 3 minutes or less of a preceding test.

##### Conformance Tests

Unless otherwise specified in a test, these conformance tests need not be conducted in any particular order. Except when a test or portion of a test specifically requires the use of a motor vehicle, either a motor vehicle or a bench test set-up that simulates the relevant functions of a motor vehicle may be used.

##### Test 1. Precision and Accuracy

Test the BAIID at the following alcohol concentrations:

- a. 0.000 g/dL BrAC,
- b. 0.008 g/dL BrAC, and
- c. 0.032 g/dL BrAC.

##### Test 2. Breath Sample Volume and Flow Rate

Use a mass flow meter to monitor sample volume. Conduct each test (a–d) five times.

- a. Test at 0.000 g/dL BrAC with sample volume 1.0 liter. The BAIID must prevent the vehicle from starting and indicate insufficient volume 5 out of 5 times.
- b. Test at 0.000 g/dL BrAC with sample volume 1.5 liters. The BAIID must permit the vehicle to start 5 out of 5 times.
- c. Test at 0.000 g/dL BrAC with sample volume 1.2 liters at 0.1 L/s. The BAIID must prevent the vehicle from starting 5 out of 5 times.
- d. Test at 0.000 g/dL BrAC with sample volume 1.2 liters at 0.7 L/s. The BAIID must permit the vehicle to start 5 out of 5 times.

##### Test 3. Calibration Stability

Initialize the BAIID to begin the calibration stability test. A BAIID must not be re-calibrated after the start of Test 3. Conduct Test 1. Repeat Test 1 at 37 days. Test 2 and Tests 4–15 may be performed between these two Precision and Accuracy tests.

If requested by the manufacturer, repeat Test 1 at 67 days, 97 days and 187 days. These additional tests are optional. They exceed the minimum requirements of this test.

<sup>3</sup> See NBS Special Publication 480-41, July 1981. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**Test 4. Input Power**

Conduct Test 1b and Test 1c at the following input power conditions:  
 a. Test at 11 VDC input power.  
 b. Test at 16 VDC input power.

**Test 5. Extreme Temperature and Humidity**

Using a temperature/humidity chamber:  
 a. Soak the BAIID at -40 °C (-40 °F) for 1 hour, then conduct Test 1b and Test 1c at that temperature using 9 VDC input power.  
 b. Soak the BAIID at 49 °C (120 °F), 95 percent relative humidity for 1 hour, then conduct Test 1b and Test 1c at that temperature and humidity using 16 VDC input power.  
 c. This part of the test applies only to BAIIDs with components installed in the engine compartment. Soak the

components of the BAIID that are installed in the engine compartment at 85 °C (185 °F), 95 percent relative humidity for 1 hour, then conduct Test 1b and Test 1c at that temperature and humidity using 16 VDC input power. The components that are installed in the passenger compartment should remain at ambient temperature and humidity conditions. Removable components will be tested in accordance with the manufacturer's instructions to the user. (See General Test Conditions).

**Test 6. Warm Up Time at -40 °C**

Using a temperature chamber, soak the BAIID for 1 hour at -40 °C. With input power set at 9 VDC, the BAIID must be ready to test in 3 minutes, and ready to retest in 3 minutes after being turned on. Conduct Test 6 five times. The BAIID must indicate that it is ready

to test or ready to retest in 3 minutes all five times. This test may be conducted in conjunction with Test 5 Extreme Temperature and Humidity.

**Test 7. Vibration**

Vibrate the BAIID in simple harmonic motion on each of three main axes uniformly through the frequency schedule specified below. For components not intended to be mounted on the engine, vibrate according to Test 7a; for components intended to be mounted on the engine, vibrate according to Test 7b. If a BAIID consists of several components connected by electrical wires or connected wirelessly, vibrate these components separately. After completion of the vibration, remove the BAIID from the shake table and conduct Test 1b and Test 1c.

**VIBRATION FREQUENCY SCHEDULE**

Test 7	Frequency range, Hz	Number of cycles	Sweep rate, octave/min	Amplitude, inches 0 to peak	Acceleration, gravity (g), 0 to peak
a .....	10 to 500	10	1	0.2	3
b .....	10 to 500	10	1	0.08	15

**Test 8. Retest**

If a BAIID includes a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle. If a BAIID does not include a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle or a bench test set-up that simulates the relevant functions of a motor vehicle.

a. Within an interval of 5 to 7 minutes after a vehicle successfully starts, using a 0.000 g/dL BrAC test sample, and while the engine is still running, the BAIID must indicate that a second breath sample is required. Conduct Test 1b five times. The BAIID must treat this test as a passed retest all 5 times.

b. Within an interval of 5 to 7 minutes after a vehicle successfully starts, using a 0.000 g/dL BrAC test sample, and while the engine is still running, the BAIID must indicate that a second breath sample is required. Conduct Test 1c five times. The BAIID must treat this test as a failed retest and prominently indicate the need for a service call.

A failed retest must be identified as an alert condition and flagged on the interlock data logger. A missed retest must be flagged on the interlock data logger. After the driver is alerted to retest, if the engine is accidentally or intentionally powered off, the BAIID must not allow the vehicle to start without a service call.

**Test 9. Tampering and Circumvention**

Attempt to start the ignition as indicated below. Conduct each test (a through f) five times. Each attempt to start the engine must be logged by the interlock data logger.

a. *Hot wiring*. Start the engine by electrically bypassing the BAIID. The interlock data logger must record the ignition on with no breath test.

b. *Push start*. A motor vehicle must be used for this part of Test 9. Use a vehicle equipped with a manual transmission. Start the engine by pushing the vehicle with another vehicle or by coasting the vehicle downhill before engaging the clutch. The vehicle must run for at least two minutes. The interlock data logger must record the ignition on with no breath test.

c. *Un-warmed air sample*. Deliver an alcohol-free air sample of at least 2 liters into the BAIID using an air filled plastic bag which is fitted to the sampling tube and squeezed in a manner that mimics a person blowing into the BAIID. The vehicle must not start.

d. *Warmed air sample*. Prepare a 12-ounce foam coffee cup fitted with a bubble tube inlet and a vent tube (rubber or tygon tubing) attached through the plastic lid. Fill the cup with 8 ounces of water warmed to 36 °C and attach the lid. Attach the vent tube to the BAIID and pass an air sample of at

least 2 liters through the bubble tube into the heated water and thence into the BAIID. The flow rate must not be high enough to cause a mechanical transfer of water to the BAIID. The vehicle must not start.

e. *Cooled 0.032 BrAC sample*. Attach a 4 foot long tygon tube of 3/8 inch inside diameter which has been cooled to ice temperature to the inlet of the BAIID, then test at 0.032 BrAC. The vehicle must not start.

f. *Filtered 0.032 BrAC sample*. Prepare a 1 to 2 inch diameter 3 to 5 inches long paper tube loosely packed with an active absorbent material. Use loose cotton plugs to retain the absorbent in the paper tube. Pack the tube so that a person can easily blow 2 liters of air through the assembly within 5 seconds. Test the absorbent by passing a 2 liter 0.032 BrAC sample through the assembly within 5 seconds. If the air passing out of the BAIID is found to have a concentration of 0.006 BrAC or less, prepare 5 tubes packed in the same manner, fit separately to the BAIID and test at 0.032 BrAC. The vehicle must not start.

g. *Alternative to Tests 9c—9f*. If a BAIID includes an anti-circumvention feature designed to ensure that the driver is blowing into the BAIID, test its operation at 0.000 BrAC in lieu of tests 9c—9f.

**Test 10. Restart of Stalled Motor Vehicle**

Conduct Test 10 using a motor vehicle. Using a 0.000 g/dL BrAC sample, turn on the ignition. Turn off the ignition. Attempt to restart the ignition without a breath sample in less than 3 minutes—the vehicle must start. Turn off the ignition. Attempt to restart the ignition without a breath sample within 3 minutes after turning off the ignition—the vehicle must not start. Conduct Test 10 five times.

**Test 11. High Altitude**

Conduct Test 1b and Test 1c each at pressures of 80 kPa and 110 kPa (600 mmHg and 820 mmHg). Conduct Test 11 five times at each indicated pressure. At indicated pressure levels, for Test 1b, the ignition must treat the test as a passed test; for Test 1c, the ignition must treat the test as a failed test.

**Test 12. Cigarette Smoke**

Direct a cigarette smoker, who is alcohol-free, to smoke approximately 1/2 of a cigarette. The smoker must wait 1 minute or the period specified by the BAIID manufacturer in its user instructions before testing. Conduct Test 12 three times. The vehicle must start.

**Test 13. Acetone**

Test the BAIID for acetone interference. Conduct Test 1b by adding 115 microliters of acetone<sup>4</sup> to the 500 milliliters of .008 g/dL BrAC alcohol simulator solution. Conduct Test 1b three times. The vehicle must start.

**Test 14. Radiofrequency Interference (RFI)/Electromagnetic Interference (EMI)**

The Society of Automotive Engineers (SAE) Surface Vehicle Standard J1113 series, Required Function Performance Status, as defined in Surface Vehicle Standard J1113-1 for Class C devices (devices essential to the operation or control of the vehicle), and the International Special Committee on Radio Interference (CISPR), Subcommittee of International

Electrotechnical Committee (IEC), specifically CISPR 25, will be used to evaluate BAIID electromagnetic immunity and compatibility. The test severity levels are specified below. The tests must be performed while the BAIID is in the drive and standby modes.

a. J1113-1 2006-10 General and definitions. Electromagnetic Compatibility Measurement Procedures and Limits for Vehicles, Boats, and Machines (Except Aircraft) (16.6 Hz to 18 GHz).

b. J1113-2 2004-07 Conducted immunity 30 Hz to 250 kHz—Power loads.

Level	Severity (volts, peak to peak)	Status
1 .....	0.15	I
2 .....	0.50	I
3 .....	1.0	I
4 .....	3.0	II

c. J1113-4 2004-08 Conducted immunity—Bulk Current Injection (BCI) Method.

Level	Severity (milliamps)	Status
1 .....	25 to 60	I
2 .....	60 to 80	II
3 .....	80 to 100	III
4 .....	100	IV

d. J1113-11 2007-06 Immunity to Conducted Transients on Power Leads.

Pulse (12 v sys)	Level	Severity (volts)	Status
1 .....	1	-25	I
	2	-50	II
	3	-75	II
	4	-100	IV
2a .....	1	25	I
	2	40	II
2b .....	3	50	II
	4	75	IV
3a .....	1	10	I
	2	-35	I
	2	-75	II

Pulse (12 v sys)	Level	Severity (volts)	Status
3b .....	3	-112	II
	4	-150	IV
	1	25	I
	2	50	II
4 .....	3	75	II
	4	100	IV
	1	-4	I
	2	-5	II
5 .....	3	-6	II
	4	-7	IV
	1	87	IV

e. J1113-13 2004-11 Part 13: Immunity to Electrostatic Discharge.

Severity	Status
<b>Contact discharge</b>	
0-4 kV .....	I
4-8 kV .....	II
8 kV .....	IV

Severity	Status
<b>Air discharge</b>	
0-4 kV .....	I
4-15 kV .....	II
15 kV .....	IV

f. J1113-21 2005-10 Immunity to Electromagnetic Fields, 30 MHz to 18 GHz.

Severity (V/M)	Status
Up to 60 .....	I
60-80 .....	II
80-100 .....	III
100-150 .....	IV

g. J1113-22 2003-11 Immunity to magnetic fields

Severity (uT)	Status
40 .....	I
40-50 .....	II
50-80 .....	III
80 .....	IV

h. IEC CISPR 25 Limits of Radio Disturbance.

**RADIATED DISTURBANCE LIMITS**

[1 M test distance, 120 kHz bandwidth]

30-75 MHz	75-400 MHz	400-1000 MHz
a 62 - 25.13 × log(F/30) .....	52 + 15.13 × log(F/75) .....	63
b 52 - 25.13 × log(F/30) .....	42 + 15.13 × log(F/75) .....	53

a: broadband, quasi-peak detector.  
b: narrowband, average detector.  
limit in dB (uV/M) at frequency F.

<sup>4</sup>The amount of acetone specified is experimentally determined based on water to air

partition factor of 365 to 1 at 34 °C to yield an

acetone concentration in the air sample of 0.5 mg/liter.

CONDUCTED TRANSIENT EMISSIONS		CONDUCTED TRANSIENT EMISSIONS— Continued	
Pulse polarity	Maximum pulse amplitude (12 volt system) (V)	Pulse polarity	Maximum pulse amplitude (12 volt system) (V)
Positive .....	75	Negative .....	- 100

LIMITS FOR BROADBAND CONDUCTED DISTURBANCES

MHz	0.15–0.3		0.53–2.0		5.9–6.2		30–54		68–108	
	P	QP	P	QP	P	QP	P	QP	P	QP
a	93	80	79	66	65	52	65	52	49	36
b	80	67	76	63	62	49	62	49	56	43

a: power lines, limit in dB (uV).  
 b: control lines, limit in dB (uA).  
 P: peak detector.  
 QP: quasi-peak detector.

LIMITS FOR NARROWBAND CONDUCTED DISTURBANCES

MHz	0.15–0.3	0.53–2.0	5.9–6.2	30–54	68–87	76–108
a	70	50	45	40	30	36
b	60	50	45	40	40	46

a: power lines, limit in dB (uV).  
 b: control lines, limit in dB (uA).  
 limits by peak detection.

Test 15. Service Interval Display

Initialize the BAIID to begin the service interval period. After thirty (30) days, the BAIID must prominently indicate that it must be taken to a designated maintenance facility for maintenance and data downloads within 7 days or the vehicle will not start and the event will be logged. Over the course of the 7-day lockout countdown, the BAIID must prominently indicate that the BAIID is in need of service and the time remaining until ignition lockout. During this period, the vehicle may be started if other conditions for starting the vehicle are met. At the end of the 7-day lockout period, the BAIID must prominently indicate that the BAIID is in need of service and the vehicle must not start. Other tests (except Tests 14 and 16) may be performed during this 37-day period.

Test 16. Data Integrity and Format

Complete all other tests before performing Test 16. Download the data from the interlock data logger and compare it to the data recorded for each test. Disconnect, then reconnect the power to the interlock data logger. Download the data again and compare it to the first data download. No lost or corrupted data is allowed. Check the data format (i.e., date and time of event) to verify conformance with the sample format in Appendix D.

APPENDIX A—QUALITY ASSURANCE PLAN TEMPLATE

[Manufacturer name]

Quality Assurance Plan for

[Interlock name AND Model number]

[date]

This Quality Assurance Plan (QAP) and the operating instructions for the [Interlock name] provide step-by-step instructions for checking the accuracy of the calibration of a BAIID and the maintenance of the BAIID. (As noted in the Model Specifications, BAIIDs must hold calibration for at least 37 days (30 days + 7 day lockout countdown) and must prominently display the service interval and provide for a 7 day lockout countdown.)

1. Provide step-by-step instructions for checking the calibration of the BAIID. These instructions must include:

- Indication of the period of time that the BAIID can maintain calibration;
- Recommended calibrating unit(s) (listed on NHTSA's Conforming Products List of Calibrating Units for Breath Alcohol Testers) and instructions for using the calibrating unit(s);
- Breath alcohol concentration to be used in the calibration check(s): 0.02 g/dL BrAC;
- Agreement of the calibration check with the breath alcohol concentration of the calibrating unit: not greater than ± 0.005 BrAC

• Description of how to verify the accuracy of the BAIID reading of BrAC (e.g., from an instrument read out, printout, interlock data logger, etc.);

• Description of actions that must be taken if the BAIID fails the calibration check.

2. Provide instructions on downloading the data from the interlock data logger.

3. Provide instructions on how to maintain the BAIID (i.e., what must be examined during maintenance; any functions that require less frequent checks). Such instructions must detail any corrective action to be taken if the BAIID fails to perform as well as any events that would require a BAIID to be taken out of service and returned to the manufacturer.

4. Provide instructions on how to check for tampering.

5. Other information regarding quality assurance unique to this instrument, if any:

Contact information for the BAIID manufacturer regarding calibration and maintenance issues:

APPENDIX B—SAMPLE FORMAT FOR DOWNLOADED DATA FROM THE INTERLOCK DATA LOGGER

EXAMPLE 1—ACCEPTABLE START AND DRIVE CYCLE

Date	Time	Start attempts (engine activity)
4/21/07 ...	0951	start attempt. sample accepted. BrAC (alcohol absent, e.g., 0.000, 0.008). starter active.
	0952	engine on.
	0956	retest. sample accepted. BrAC (alcohol absent, e.g., 0.000, 0.008).

approximately 50 registrants governed by Rule 6c-7. The burden of compliance with Rule 6c-7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeem ability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of approximately 2,300 purchasers annually (at an estimated \$64 per hour),<sup>1</sup> for a total annual burden of 115 hours (at a total annual cost of \$7,360).

Rule 6c-7 requires that the separate account's registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) include a representation that Rule 6c-7 is being relied upon and is being complied with. This requirement enhances the Commission's ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c-7.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeem ability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N-3 (17 CFR 274.11b) and Form N-4 (17 CFR 274.11c).)

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_](mailto:Shagufta_)

<sup>1</sup> \$64/hour figure for a Compliance Clerk is from SIFMA's Office Salaries in the Securities Industry 2013 survey, modified by Commission staff to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[Ahmed@omb.eop.gov](mailto:Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: March 24, 2015.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-07130 Filed 3-27-15; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0058]

#### Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Technical corrections; proposed changes and request for comments.

**SUMMARY:** NHTSA published a notice in the Federal Register on May 8, 2013, (78 FR 26849; NHTSA Docket 2013-0058) that revised the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs). The text of the notice contained some typographical and technical errors. This document describes and corrects those errors. This notice also proposes some additional changes to the BAIID Model Specifications and requests comments on the proposed changes.

**DATES:** The technical corrections contained in this notice are effective on March 30, 2015. Regarding the proposed changes contained in this notice, written comments may be submitted to this agency and must be received no later than April 29, 2015.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number NHTSA-2013-0058 by any of the following methods:

- **Electronic submissions:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE.,

Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays. Regardless of how you submit your comments, you should identify the Docket number of this document.

**Instructions:** For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or visit the West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

**For technical issues:** Ms. De Carlo Ciccel, Behavioral Research Division, NHT-131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone number: (202) 366-1694; Email: [decarlo.ciccel@dot.gov](mailto:decarlo.ciccel@dot.gov).  
**For legal issues:** Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone number: (202) 366-1834; Email: [jin.kim@dot.gov](mailto:jin.kim@dot.gov).

**SUPPLEMENTARY INFORMATION:** NHTSA published a notice in the Federal Register on May 8, 2013, (78 FR 26849; NHTSA Docket 2013-0058) that revised the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs).

The notice that was published on May 8, 2013, went into effect one year later, on May 8, 2014. As explained in the 2013 notice, NHTSA considered whether it should evaluate ignition interlocks against the Model Specifications and publish a conforming products list (CPL) of devices that meet the specifications. For reasons described in some detail in the 2013 notice, NHTSA explained that it would delay

rendering a decision about the feasibility and timing of a CPL until more information is available. NHTSA stated, in the notice, that it planned to conduct an assessment to determine whether establishing and maintaining a CPL is feasible, prior to making a decision.

Following publication of the 2013 notice, NHTSA initiated such an assessment. During the course of the assessment, NHTSA identified some aspects of the Model Specifications that may warrant clarification and/or modification. In addition, the agency received written communications from a number of organizations, including interlock providers, a testing laboratory, the Association of Ignition Interlock Program Administrators (AIIPA) and others, which brought some typographical and technical errors to the agency's attention and/or sought clarification regarding some elements of the Model Specifications. These written communications and our responses have been placed in our public docket (NHTSA-2013-0058).

This notice describes and corrects the technical errors. These technical corrections will take effect immediately. This notice also proposes some revisions to the Model Specifications and requests comments on the proposed changes.

#### **A. Technical Corrections (Which Will Take Effect Immediately)**

The following changes are considered by the agency to be technical corrections. They will take effect immediately upon publication of this notice in the Federal Register.

##### *Test 9. Tampering and Circumvention— e. Cooled 0.032 BrAC Sample*

In the Federal Register notice published on May 8, 2013, Test 9e in the Model Specifications indicated that a .032 sample should be “cooled to ice temperature”.

This notice inserts the word “water” and the parenthetical “(0°C/32°F)” to clarify that the sample should be “cooled to ice water temperature,” which is 0°C (32°F).

##### *Test 11. Altitude*

In the Federal Register notice published on May 8, 2013, Test 11 in the Model Specifications was entitled “High Altitude” (78 FR 26865). However, it covers tests for both high altitude (low pressure) and low altitude (high pressure) conditions.

This notice corrects the title for the test to read, “Altitude.” The tests themselves have not been changed.

##### *Test 16. Data Integrity and Format*

In the Federal Register notice published on May 8, 2013, there was a reference under Test 16 to Appendix D (78 FR 26866). This was a typographical error. There were only two appendices to that notice, Appendix A and Appendix B.

This notice corrects that reference to Appendix B.

#### **B. Proposed Changes (About Which We Request Comments)**

The following changes are being proposed by the agency. The agency requests comments on these proposed changes.

##### *Test 8. Retest*

Test 8 of the Model Specifications include a series of tests to simulate the BAIID functions that must operate in connection with retests once the vehicle has been started, including an indication to the driver that a retest must be taken. Two commenters requested clarification regarding this test. Specifically, their questions related to provisions requiring that the BAIID “indicate the need for a service call” and stating that “the BAIID must not allow the vehicle to start without a service call.”

As provided in Test 8 of the Model Specifications, a failed retest must trigger an alert to the driver and be flagged (recorded) on the interlock data logger. A missed retest also must be flagged (recorded) on the data logger. Conformance will require verification that alerts were made and that these events were recorded on the data logger.

In the Federal Register notice published on May 8, 2013, NHTSA expressed agreement with comments received that some decisions are programmatic in nature and should not be included in the Model Specifications. The Model Specifications are intended to apply to the performance of BAIID units, not the manner in which State and local jurisdictions conduct their programs (78 FR 26851). Consistent with this sentiment, NHTSA had intended to remove certain references, including those providing for the need for a service call in Test 8, but the agency inadvertently left them in this subsection.

This notice proposes to correct the third sentence, in the first paragraph under Test 8b (78 FR 26864), which currently reads: “The BAIID must treat this test as a failed retest and prominently indicate the need for a service call.” This notice proposes to revise this sentence as follows: “The BAIID must treat this test as a failed retest and prominently alert the driver.”

##### *Test 9. Tampering and Circumvention*

One request for clarification related to elements of Test 9 in the Model Specifications, which test a BAIID's ability to prevent tampering and circumvention.

##### *d. Warmed Air Sample*

The commenter asserted that “a 12 oz Styrofoam coffee cup with a plastic lid can never get enough pressure. It would be better to mirror CNRC version of 0.5L PLASTIC cup with a lid.”

The purpose of Test 9d is to determine whether a warmed air sample (not from a person) can be pumped into a BAIID and cause an interlock-equipped vehicle to start. In the Federal Register notice published on May 8, 2013, NHTSA specified that a “foam coffee cup” with a “plastic lid” be used (78 FR 26864). However, the properties of the cup and lid are more important than the materials they are made from.

This notice proposes to clarify that the cup must be insulated, but it need not be constructed of Styrofoam; and that the lid must be secure, but it need not be constructed of plastic. This notice proposes to change the first sentence of the instructions for this test by providing, “Prepare a 12-ounce insulated cup, fitted with a bubble tube inlet and a vent tube (rubber or tygon tubing), attached through a secure lid.”

##### *f. Filtered 0.032 BrAC Sample*

The commenter asserted that “The paper tube called for does not work. You can typically not build up enough pressure in the paper tube to trigger a sample at all, meaning the test is very easy to pass. If it were changed to any readily available material, it would be more effective to testing for the ability of the filtering material itself to filter out the alcohol and not just the fact that there is not enough pressure.”

In the Federal Register notice published on May 8, 2013, Test 9f in the Model Specifications provided, “Prepare a 1 to 2 inch diameter 3 to 5 inches long paper tube loosely packed with an active absorbent material . . . [and using] cotton plugs to retain the absorbent [material] in the paper tube.” (78 FR 26864)

The purpose of this test is to determine whether an interlock-equipped vehicle would start if a person with alcohol in their system were to blow an air sample through a filter. NHTSA believes that using “a 1 to 2 inch diameter 3 to 5 inches long paper tube loosely packed with an active absorbent material . . . [and using] cotton plugs to retain the absorbent [material] in the paper tube”, as

described in the Model Specifications, will permit a sufficient test under this section. To clarify, a cardboard tube can be used in lieu of thinner paper goods, and absorbent material can include charcoal, kitty litter or other materials that are readily available. Moreover, this test is not designed to determine the ability of any particular material to filter alcohol from an air sample. Rather, it is a test of the BAIID's ability to detect whether an air sample containing alcohol has been filtered to remove the alcohol.

Accordingly, this notice proposes to provide additional flexibility in the materials that may be used in conducting this test. It proposes to provide instead, "Prepare a 1 to 2 inch diameter 3 to 5 inches long tube loosely packed with an active absorbent material. Use porous plugs (such as cotton) to retain the absorbent material in the tube."

#### *Test 10. Restart of Stalled Motor Vehicle*

In the Federal Register notice published on May 8, 2013, Test 10 in the Model Specifications stated that a restart without breath sample in less than 3 minutes should allow the vehicle to start, but then it stated, "Attempt to restart the ignition without a breath sample within 3 minutes . . . the vehicle must not start." (78 FR 26865) The agency received comments, stating that these provisions appear contradictory and are confusing.

This notice proposes to correct the Model Specifications as follows: "Attempt to restart the engine without a breath sample in less than 3 minutes—the vehicle must start. Turn off the engine. Attempt to restart the engine without a breath sample 3 minutes or more after turning off the engine—the vehicle must not start." If trying to start the vehicle after 3 minutes, a breath sample would need to be provided.

#### *Test 14. Radiofrequency Interference/ Electromagnetic Interference*

Test 14 of the Model Specifications is entitled "Radiofrequency Interference (RFI)/Electromagnetic Interference (EMI)". It contains a series of tests to evaluate BAIID for radiofrequency and electromagnetic immunity and compatibility. These tests are based on standards that are commonly used in the industry for motor vehicles and motor vehicle equipment, including Society of Automotive Engineers (SAE) Surface Vehicle Standard J1113 series, Required Function Performance Status, as defined in Surface Vehicle Standard J113-1 for Class C devices and the International Special Committee on Radio Interference (CISPR),

Subcommittee of International Electrotechnical Committee (IEC), CISPR 25.

In conducting its assessment of the RFI/EMI tests, NHTSA determined that some aspects of Test 14 required correction and/or clarification. This notice proposes a number of revisions to account for these issues.

#### a. Drive and Standby Modes

The Model Specifications provide that Test 14 "must be performed while the BAIID is in the drive and standby modes." During our assessment, we observed no differences between the RFI/EMC test results obtained in standby (ready to blow) mode and the results obtained in drive mode. Therefore, testing in Drive mode appears to be unnecessary. For this reason, NHTSA proposes to revise the Model Specifications to provide that Test 14 need only "be performed in standby mode."

#### b. Frequency Range of Tests 14c. and 14f

The Model Specifications specifies the frequency range for some, but not all, tests to be performed under Test 14. In particular, the Model Specifications did not specify the frequency range for Test 14c (J1113-4 2004-08 Conducted Immunity—Bulk Current Injection (BCI) Method). Consistent with SAE Standards, this notice proposes to add that Test 14c should be performed from 1 MHz to 400 MHz.

Normally, the frequency ranges of Test 14c and Test 14f (J1113-21 2005-10 Immunity to Electromagnetic Fields) are run as companion tests. Together, they cover the entire frequency range of a device being tested. Accordingly, consistent with SAE Standards, this notice proposes to revise the Model Specification to provide that Test 14f should be performed from 400 MHz to 18 GHz. Combined with Test 14c, the entire frequency range of 1 MHz to 18 GHz would be covered.

#### c. Clarification of Conditions Under Test 14d, Pulse 5

The Model Specifications identified the final pulse under Test 14d as Pulse 5, but this pulse should have been identified as Pulse 5a. This notice proposes to make that correction. The parameters of the test will remain unchanged. It should continue to be conducted at Level 1, with 87 volts. As before, to conform to the test, a BAIID must achieve Status IV (no damage to function after disturbance is removed; dealer action may be required to return the function to normal operation after

the disturbance is removed, e.g., battery reset).

The agency encourages interested parties to carefully review this notice and the proposed revisions to the Model Specifications that are described herein, and to submit comments in the manner identified in the Addresses above.

#### **Technical Corrections to Text of Model Specifications**

For convenience and clarity, the full text of the Tests that are corrected are included below.

1. In the Federal Register of May 8, 2013, on page 26864, in column 3, Test 9e is corrected to read as follows:

#### *Test 9. Tampering and Circumvention*

\* \* \* \* \*

e. *Cooled 0.032 BrAC sample.* Attach a 4 foot long tygon tube of 3/8 inch inside diameter which has been cooled to ice water temperature (0 °C/32 °F) to the inlet of the BAIID, then test at 0.032 BrAC. The vehicle must not start.

2. In the Federal Register of May 8, 2013, on page 26865, in column 1, the title for Test 11 is corrected to read as follows:

#### *Test 11. Altitude*

3. In the Federal Register of May 8, 2013, on page 26866, in column 1, Test 16 is corrected to read as follows:

#### *Test 16. Data Integrity and Format*

Complete all other tests before performing Test 16. Download the data from the interlock data logger and compare it to the data recorded for each test. Disconnect, then reconnect the power to the interlock data logger. Download the data again and compare it to the first data download. No lost or corrupted data is allowed. Check the data format (i.e., date and time of event) to verify conformance with the sample format in Appendix B.

#### **Proposed Changes to Text of Model Specifications**

1. NHTSA proposes to revise the Model Specifications published in the Federal Register of May 8, 2013, on page 26864, in column 1, Test 8 to read as follows:

#### *Test 8. Retest*

If a BAIID includes a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle. If a BAIID does not include a feature designed to detect whether the vehicle is moving, conduct Test 8 using a motor vehicle or a bench test set-up that simulates the relevant functions of a motor vehicle.

a. Within an interval of 5 to 7 minutes after a vehicle successfully starts, using

a 0.000 g/dL BrAC test sample, and while the engine is still running, the BAIID must indicate that a second breath sample is required. Conduct Test 1b five times. The BAIID must treat this test as a passed retest all 5 times.

b. Within an interval of 5 to 7 minutes after a vehicle successfully starts, using a 0.000 g/dL BrAC test sample, and while the engine is still running, the BAIID must indicate that a second breath sample is required. Conduct Test 1c five times. The BAIID must treat this test as a failed retest and prominently alert the driver.

A failed retest must be identified as an alert condition and flagged on the interlock data logger. A missed retest must be flagged on the interlock data logger.

2. NHTSA proposes to revise the Model Specifications published in the Federal Register of May 8, 2013, on page 26864, in columns 2-3, Test 9d and Test 9f to read as follows:

**Test 9. Tampering and Circumvention**

\* \* \* \* \*

d. *Warmed air sample.* Prepare a 12-ounce insulated cup fitted with a bubble tube inlet and a vent tube (rubber or tygon tubing), attached through a secure lid. Fill the cup with 8 ounces of water warmed to 36°C and attach the lid. Attach the vent tube to the BAIID and pass an air sample of at least 2 liters through the bubble tube into the heated water and thence into the BAIID. The flow rate must not be high enough to cause a mechanical transfer of water to the BAIID. The vehicle must not start.

\* \* \* \* \*

f. *Filtered 0.032 BrAC sample.* Prepare a 1 to 2 inch diameter 3 to 5 inches long tube loosely packed with an active absorbent material. Use porous plugs (such as cotton) to retain the absorbent material in the tube. Pack the tube so that a person can easily blow 2 liters of air through the assembly within 5 seconds. Test the absorbent by passing a 2 liter 0.032 BrAC sample through the assembly within 5 seconds. If the air passing out of the BAIID is found to have a concentration of 0.006 BrAC or less, prepare 5 tubes packed in the same manner, fit separately to the BAIID and test at 0.032 BrAC. The vehicle must not start.

\* \* \* \* \*

4. NHTSA proposes to revise the Model Specifications published in the Federal Register of May 8, 2013, on page 26865, in column 1, Test 10 to read as follows:

**Test 10. Restart of Stalled Motor Vehicle**

Conduct Test 10 using a motor vehicle.

Using a 0.000 g/dL BrAC sample, turn on the engine. Turn off the engine. Attempt to restart the ignition without a breath sample in less than 3 minutes—the vehicle must start. Turn off the engine. Attempt to restart the engine without a breath sample 3 minutes or more after turning off the engine—the vehicle must not start. Conduct Test 10 five times.

5. NHTSA proposes to revise Test 14 of the Model Specifications published in the Federal Register of May 8, 2013, beginning on page 26865, in column 1, to read as follows:

**Test 14. Radiofrequency Interference (RFI)/Electromagnetic Interference (EMI)**

The Society of Automotive Engineers (SAE) Surface Vehicle Standard J1113 series, Required Function Performance Status, as defined in Surface Vehicle Standard J1113-1 for Class C devices (devices essential to the operation or control of the vehicle), and the International Special Committee on Radio Interference (CISPR), Subcommittee of International Electrotechnical Committee (IEC), specifically CISPR 25, will be used to evaluate BAIID electromagnetic immunity and compatibility. The test severity levels are specified below. The tests must be performed while the BAIID is in standby mode.

\* \* \* \* \*

c. J1113-4 2004-08 Conducted immunity, 1 MHz to 400 MHz—Bulk Current Injection (BCI) Method.

Level	Severity (volts, peak to peak)	Status
1	25 to 60	I
2	60 to 80	II
3	80 to 100	III
4	100	IV

d. J1113-11 2007-06 Immunity to Conducted Transients on Power Leads.

Pulse (12 v sys)	Level	Severity (volts)	Status
1	1	-25	I
	2	-50	II
	3	-75	II
	4	-100	IV
2a	1	25	I
	2	40	II
	3	50	II
	4	75	IV
2b	1	10	I
3a	1	-35	I
	2	-75	II
	3	-112	II

Pulse (12 v sys)	Level	Severity (volts)	Status
3b	4	-150	IV
	1	25	I
	2	50	II
	3	75	II
4	4	100	IV
	1	-4	I
	2	-5	II
	3	-6	II
5a	4	-7	IV
	1	87	IV

\* \* \* \* \*

f. J1113-21 2005-10 Immunity to Electromagnetic Fields, 400 MHz to 18 GHz.

Severity (V/M)	Status
Up to 60	I
60-80	II
80-100	III
100-150	IV

(Authority: 23 U.S.C. 403; 49 CFR 1.95; 49 CFR Part 501)

Dated: March 25, 2015.

**Jeffrey Michael,**  
Associate Administrator for the Office of Research and Program Development,  
National Highway Traffic Safety Administration.

[FR Doc. 2015-07161 Filed 3-27-15; 8:45 a.m.]  
BILLING CODE 4910-59-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

[Docket No. DOT-OST-2012-0087]

**Advisory Committee for Aviation Consumer Protection**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice of seventh meeting of advisory committee.

**SUMMARY:** This notice announces the seventh meeting of the Advisory Committee for Aviation Consumer Protection.

**DATES:** The seventh meeting of the advisory committee is scheduled for April 14, 2015, from 9:00 a.m. to 4:00 p.m., Eastern Time.

**ADDRESSES:** The meeting will be held in the Media Center (located on the lobby level of the West Building) at the U.S. Department of Transportation (DOT) headquarters, 1200 New Jersey Avenue SE., Washington, DC. Attendance is open to the public up to the room's

## GENERAL AND SPECIFIC STATUTES AND RULES

### **28-101. Definitions**

(L19, Ch. 89, sec. 1 & Ch. 120, sec. 1)

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
  - (a) The number of grams of alcohol per one hundred milliliters of blood.
  - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
  - (a) A motor vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is fifty or fewer inches in width.
    - (iii) Has an unladen weight of one thousand two hundred pounds or less.
    - (iv) Travels on three or more nonhighway tires.
    - (v) Is operated on a public highway.
  - (b) A recreational off-highway vehicle that satisfies all of the following:
    - (i) Is designed primarily for recreational nonhighway all-terrain travel.
    - (ii) Is eighty or fewer inches in width.
    - (iii) Has an unladen weight of two thousand five hundred pounds or less.
    - (iv) Travels on four or more nonhighway tires.
    - (v) Has a steering wheel for steering control.
    - (vi) Has a rollover protective structure.
    - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
  - (a) A fire department vehicle.
  - (b) A police vehicle.
  - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
  - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
  - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
  - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. "Board" means the transportation board.
9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

15. "Conviction" means:

- (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
- (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
- (c) A plea of guilty or no contest accepted by the court.
- (d) The payment of a fine or court costs.

16. "County highway" means a public road that is constructed and maintained by a county.

17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

19. "Digital network or software application" has the same meaning prescribed in section 28-9551.

20. "Director" means the director of the department of transportation.

21. "Drive" means to operate or be in actual physical control of a motor vehicle.

22. "Driver" means a person who drives or is in actual physical control of a vehicle.

23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

24. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

25. "Electric miniature scooter" means a device that:

- (a) Weighs less than thirty pounds.
- (b) Has two or three wheels.
- (c) Has handlebars.
- (d) Has a floorboard on which a person may stand while riding.
- (e) Is powered by an electric motor or human power, or both.
- (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

26. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

27. "Electric standup scooter":

(a) Means a device that:

- (i) Weighs less than seventy-five pounds.
- (ii) Has two or three wheels.
- (iii) Has handlebars.
- (iv) Has a floorboard on which a person may stand while riding.
- (v) Is powered by an electric motor or human power, or both.
- (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

28. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

- (b) An electronic or digital license plate authorized pursuant to section 28-364.
29. "Farm" means any lands primarily used for agriculture production.
30. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
31. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
32. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
33. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.
34. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
- (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
  - (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
35. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.
36. "Livery vehicle" means a motor vehicle that:
- (a) Has a seating capacity not exceeding fifteen passengers including the driver.
  - (b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.
  - (c) Is available for hire on an exclusive or shared ride basis.
  - (d) May do any of the following:
    - (i) Operate on a regular route or between specified places.
    - (ii) Offer prearranged ground transportation service as defined in section 28-141.
    - (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.
37. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
38. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.
39. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.
40. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.
41. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.
42. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:
- (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
  - (b) The vehicle has at least four wheels in contact with the ground.
  - (c) The vehicle seats at least eight passengers, including the driver.

- (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
  - (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
  - (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.
  - (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
  - (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
43. "Motor vehicle":
- (a) Means either:
    - (i) A self-propelled vehicle.
    - (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.
  - (b) Does not include a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:
    - (i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.
    - (ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
44. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.
45. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:
- (a) The vehicle is emission free.
  - (b) The vehicle has at least four wheels in contact with the ground.
  - (c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
46. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.
47. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.
48. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
49. "Owner" means:
- (a) A person who holds the legal title of a vehicle.
  - (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
  - (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
50. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
51. "Personal delivery device":
- (a) Means an electronically powered device that:
    - (i) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
    - (ii) Weighs less than two hundred pounds, excluding cargo, unless otherwise authorized by a local authority pursuant to section 28-627.
    - (iii) Operates at a maximum speed of seven miles per hour, unless otherwise authorized by a local authority pursuant to section 28-627.
    - (iv) Is equipped with technology to allow for the operation of the device with or without the active control or monitoring of a natural person.

(v) Is equipped with a braking system that when active or engaged enables the personal delivery device to come to a controlled stop.

(b) Does not include a personal mobile cargo carrying device.

52. "Personal mobile cargo carrying device" means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

53. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

54. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

55. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

56. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

57. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

58. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

59. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

60. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

61. "State" means a state of the United States and the District of Columbia.

62. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

63. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

64. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

65. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

66. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

67. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

68. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

69. "Transportation network company" has the same meaning prescribed in section 28-9551.

70. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

71. "Transportation network service" has the same meaning prescribed in section 28-9551.

72. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

73. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

74. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Personal mobile cargo carrying devices.

75. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

#### **28-366. Director; rules**

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

#### **28-1301. Definitions**

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.

2. "Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

(a) The bump start of a motor vehicle with a certified ignition interlock device.

(b) The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle.

(c) The introduction of an intentionally contaminated or a filtered breath sample.

(d) The intentional disruption or blocking of a digital image identification device.

(e) The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body.

(f) Operating a motor vehicle without a properly functioning certified ignition interlock device.

(g) Allowing a person other than the person who is required to maintain a functioning certified ignition interlock device pursuant to this chapter to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:
  - (a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
  - (b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.
  - (c) Is a school bus.
  - (d) Is a bus.
  - (e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.
5. "Ignition interlock device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the national highway traffic safety administration specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.
6. "Ignition interlock service provider" means a person who is an authorized representative of a manufacturer and who is under contract with the department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.
7. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.
8. "Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction or production of an ignition interlock device and that is certified by the department to offer ignition interlock devices for installation in motor vehicles in this state.
9. "Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.
10. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.
11. "Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the certified ignition interlock device from its power source that allows the operator to start the engine without taking and passing the requisite breath test.
12. "Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, repair, calibrate, service or remove certified ignition interlock devices.
13. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

**28-1381. Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification**

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
2. If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.
4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28-3001 and the person has an alcohol concentration of 0.04 or more.

B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

- C. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.
- D. A person using a drug as prescribed by a medical practitioner who is licensed pursuant to title 32 and who is authorized to prescribe the drug is not guilty of violating subsection A, paragraph 3 of this section.
- E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to this section, all prior convictions of violating this section, section 28-1382 or section 28-1383 occurring within the past thirty-six months, unless there is an insufficient legal or factual basis to do so.
- F. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.
- G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:
1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.
  2. If there was at that time in excess of 0.05 but less than 0.08 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
  3. If there was at that time 0.08 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.
- H. Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.
- I. A person who is convicted of a violation of this section:
1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served.
  2. Shall pay a fine of not less than \$250.
  3. May be ordered by a court to perform community restitution.
  4. Shall pay an additional assessment of \$500 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
  5. Shall pay an additional assessment of \$500 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
  6. If the violation involved intoxicating liquor, shall be required by the department, on report of the conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.
  7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.
- J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but one day of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

K. If within a period of eighty-four months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1382 or 28-1383, the person:

1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.
2. Shall pay a fine of not less than \$500.
3. Shall be ordered by a court to perform at least thirty hours of community restitution.
4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and, if the violation involved intoxicating liquor, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.
5. Shall pay an additional assessment of \$1,250 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
6. Shall pay an additional assessment of \$1,250 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

M. In applying the eighty-four month provision of subsection K of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

N. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

O. After completing forty-five days of the revocation period prescribed by subsection K of this section, a person whose driving privilege is revoked for a violation of this section and who is sentenced pursuant to subsection K of this section is eligible for a special ignition interlock restricted driver license pursuant to section 28-1401.

P. The court may order a person who is convicted of a violation of this section that does not involve intoxicating liquor to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. On receipt of the report of conviction and certified ignition interlock device requirement, the department shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this subsection shall comply with article 5 of this chapter.

**28-1461. Use of certified ignition interlock devices; reporting**

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:

(a) Pay the costs for installation and maintenance of the certified ignition interlock device.

(b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.

(c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of calibration of the certified ignition interlock device to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. While a person maintains a functioning certified ignition interlock device in a vehicle pursuant to this chapter, the ignition interlock manufacturer shall electronically provide to the department in real time and in a form prescribed by the department the following information:

1. Any tampering or circumvention.

2. Any failure to provide proof of compliance or inspection of the certified ignition interlock device as prescribed in this section.

3. Any attempt to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the vehicle with any spirituous liquor in the person's body.

4. Each time that a person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

C. If the person is under eighteen years of age, the ignition interlock service provider, if requested by the person's parent or legal guardian, shall provide to the person's parent or legal guardian the information prescribed in subsection B of this section.

D. On request, the ignition interlock manufacturer shall provide the information prescribed in subsection B of this section to:

1. The department of health services authorized provider.

2. The probation department that is providing alcohol or other drug screening, education or treatment to the person.

3. The physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor who is evaluating the person's ability to safely operate a motor vehicle following a revocation of the person's driving privilege as prescribed in section 28-3315, subsection D.

4. The court.

E. The department shall extend an ignition interlock restricted or limited driver license and the certified ignition interlock device period for six months if the department has reasonable grounds to believe that any of the following applies:

1. The person tampered with or circumvented the certified ignition interlock device.

2. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.

3. If the person is under twenty-one years of age, the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.

4. The person failed to provide proof of compliance or inspection as prescribed in this section.

5. The person attempts to operate the vehicle with an alcohol concentration of 0.08 or more during a six month extension pursuant to this subsection.

6. The person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

F. If the special ignition interlock restricted license is extended pursuant to subsection E of this section, the limitations prescribed in sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the restrictive period of the license ends.

G. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section 28-1402 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device. Unless the person is convicted of a second or subsequent violation of section 28-1381, 28-1382 or 28-1383,

the notation may not include any mark, color change or other notation or indication on the person's physical driver license.

H. Proof of compliance does not include a skipped or missed random sample if the motor vehicle's ignition is off at the time of the skipped or missed sample.

**28-1462. Ignition interlock device certification and decertification; service provider bonds**

A. After consulting with the director of the department of public safety, the assistant director for the motor vehicle division of the department of transportation shall:

1. Certify ignition interlock devices.
2. Publish a list of certified ignition interlock devices that includes information about the manufacturers of the devices and where the devices may be ordered.
3. Make the list available to the courts and probation departments without charge.
4. Establish standards and qualifications for technicians.

B. The assistant director shall adopt rules prescribing the requirements for certification and decertification of an ignition interlock device. These rules shall include:

1. The procedure for certification of ignition interlock devices.
2. Provisions to ensure the reliability of the ignition interlock device over the range of motor vehicle environments.
3. Provisions to ensure that the ignition interlock device works accurately in an unsupervised environment.
4. The procedure for decertification of an ignition interlock device for cause.

C. The assistant director shall not certify an ignition interlock device unless all of the following are satisfied:

1. The device requires a deep-lung breath sample or another accurate measure of the concentration by weight of alcohol in the breath.
2. The device is made by a manufacturer that is covered by product liability insurance in the amount of one million dollars per event and three million dollars in the aggregate.
3. The manufacturer of the device indemnifies this state against any liability that may result from the use of the device.
4. The device meets or exceeds the 2013 national highway traffic safety administration standards, including the ability to wirelessly transmit and receive information, take a digital image and include the global positioning system location of the device at the time of a requested test.
5. The device is repaired or modified only by the manufacturer of the device.
6. All of the device reporting that is required by sections 28-1461 and 28-1468 originates from the device manufacturer.

D. The assistant director may adopt, in whole or in part, the guidelines, rules, regulations, studies or independent laboratory tests performed and relied on by other states or agencies or commissions of other states in the certification or approval of ignition interlock devices.

E. Each ignition interlock service provider who installs a certified ignition interlock device shall submit to the department a bond in a form to be approved by the assistant director and in an amount of at least two hundred thousand dollars. The bond inures to the benefit of any person who is ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 of this chapter or section 28-3319 and who suffers a loss because of either of the following:

1. Insolvency or discontinuance of business of the ignition interlock service provider who installed the device.
2. Failure of the ignition interlock service provider or agent or subcontractor of the ignition interlock service provider to comply with any provision of a contract that is required pursuant to section 28-1468 or any rule adopted pursuant to this section.

F. The assistant director shall adopt a warning label design to be affixed to each certified ignition interlock device on installation. The label shall contain a warning that a person tampering with, circumventing or otherwise misusing the ignition interlock device is guilty of a class 1 misdemeanor.

G. After consultation with the director of the department of public safety, the assistant director may include information the assistant director deems necessary in the notice prescribed in section 28-3318 regarding certified ignition interlock devices.

H. An ignition interlock service provider shall collect a fee for each certified ignition interlock device that is installed by the provider in an amount that is determined by the director. The ignition interlock service provider shall remit the collected fees to the department on a monthly basis and in a manner established by the department. The department shall deposit the fees in the ignition interlock device fund established by section 28-1469.

**28-1463. Proof of compliance; suspension; hearings**

A. If a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 does not submit proof of compliance to the department as prescribed in section 28-1461, the department shall suspend the person's driving privilege until proof of compliance is submitted to the department. Unless a different time period is specified pursuant to section 28-3319, subsection D, the department shall require use of the certified ignition interlock device for one year from the date the person submits proof of compliance as prescribed in section 28-1461. If a person does not request a hearing pursuant to subsection B of this section, the department shall immediately suspend the person's driver license.

B. A person whose driver license is suspended pursuant to this section may submit a written request for a hearing. The written request must be received by the department within fifteen days after the date of the order of suspension. On receipt of a request for a hearing, a hearing shall be held within thirty days.

C. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered driver license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision.

D. Hearings requested pursuant to this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the person was ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 or 3.1 of this chapter or section 28-3319.
2. Whether the person submitted proof of compliance or calibration pursuant to section 28-1461.

**28-1464. Ignition interlock devices; violations; classification; definition**

A. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

B. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

C. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

D. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402.

E. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

F. A person who is not an ignition interlock service provider or an agent or subcontractor of an ignition interlock service provider and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

G. Except in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not operate a motor vehicle without a functioning certified ignition interlock device during the applicable time period.

H. If the ignition interlock device is removed from a vehicle by an ignition interlock service provider, the ignition interlock manufacturer shall electronically notify the department in a form prescribed by the department that the ignition interlock device has been removed from the vehicle.

I. If the person does not provide evidence to the department within seventy-two hours that the person has installed a functioning certified ignition interlock device in each vehicle operated by the person and has

provided proof of installation to the department, the department shall suspend the special ignition interlock restricted driver license or privilege as prescribed in section 28-1463.

J. A person who is ordered by the court or required by the department pursuant to section 28-3319 to equip any motor vehicle the person operates with a certified ignition interlock device shall while under arrest submit to any test chosen by a law enforcement officer pursuant to section 28-1321, subsection A.

K. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating subsection B, C, E or G of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

L. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is not reasonably available to drive in response to an emergency.

**28-1465. Rulemaking; ignition interlock service providers and manufacturers; civil penalty**

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for the administration and enforcement of this article, including a rule that permits the director to impose a civil penalty against a manufacturer of a certified ignition interlock device or an ignition interlock service provider who fails to properly report ignition interlock data to the director in the manner prescribed by the director. Any monies collected from civil penalties imposed for a failure to report ignition interlock data shall be deposited in the driving under the influence abatement fund established by section 28-1304.

**28-1466. Display of certification; transfer prohibited**

A certification issued pursuant to this article:

1. Shall be conspicuously displayed in the place of business for which it was obtained.
2. Is not transferable or subject to sale or reassignment.

**28-1467. Ignition interlock service provider contracts; cancellation; notice**

If the director cancels an ignition interlock service provider's contract, the director shall notify each person with an ignition interlock device from the ignition interlock service provider that the person has thirty days to obtain another ignition interlock service provider.

**28-1468. Ignition interlock service provider application; denial; appeal; contract requirements; manufacturer reporting requirements; cease and desist order**

A. An application for authorization of an ignition interlock service provider contract must be submitted to the director by the manufacturer in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and must contain:

1. The name and residence address of the applicant, the name and residence address of each partner if the applicant is a partnership or the name and residence address of each principal officer if the applicant is a corporation.
2. The applicant's principal place of business.
3. The location or planned location for each place of business at or from which the business is to be conducted.
4. Any other information the director requires.

C. The director may approve an application for authorization of a contract if the director determines that the requirements of this article are met.

D. The director may deny an application for authorization of a contract if any person included in the application has:

1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.
2. Been convicted of a class 1, 2, 3 or 4 felony or a crime of moral turpitude, breach of trust, fraud, theft or dishonesty in any jurisdiction or any foreign country within ten years before the date of the application.
3. Been convicted of any criminal act, other than a crime described in paragraph 2 of this subsection, in any jurisdiction or a foreign country within five years before the date of the application.
4. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

E. The director may deny an application for authorization of an ignition interlock service provider contract under this article and, if denied, shall notify the applicant in writing of the denial within twenty days after the denial and of the grounds for the denial if the director determines that any of the following applies:

1. The applicant is not eligible for an ignition interlock service provider contract under this article.

2. The application is not made in good faith.
  3. The application contains a material misrepresentation or misstatement.
  4. The applicant has not met the requirements of this chapter.
- F. An applicant whose application is denied may make a written request to the department for a hearing on the denial of the application within fifteen days after the notice of denial. If the applicant does not request a hearing within thirty days, the denial is final.
- G. If the applicant requests a hearing, the director shall provide written or electronic notice to the applicant to appear at a hearing to show cause why the denial of the applicant's application should not be upheld. After consideration of the evidence presented at the hearing, the director shall issue a written decision and order.
- H. If the application is denied, the applicant may appeal the decision pursuant to title 12, chapter 7, article 6.
- I. If the director authorizes an ignition interlock service provider's application for a contract, the ignition interlock service provider's contract with the department must meet or exceed the requirements in this section, be for a term of at least three years and include all of the following provisions and requirements:
1. Require the ignition interlock service provider to maintain at least one service center in each county in this state.
  2. Ignition interlock devices must be effectively and efficiently installed, calibrated and removed.
  3. Ignition interlock devices must be serviced, inspected and monitored.
  4. The ignition interlock manufacturer must electronically transmit reports to the department in a format that is determined by the department and that includes any of the following:
    - (a) Driver activity.
    - (b) Bypass approval.
    - (c) Compliance.
    - (d) Client violations.
    - (e) Unique identifying numbers for each device.
    - (f) Unique employee numbers identifying the person who installed or removed an ignition interlock device.
  5. A detailed implementation plan that outlines the steps and the time frames necessary for the ignition interlock service provider to be fully operational.
  6. The ignition interlock service provider must collect and remit all applicable fees and taxes to the appropriate government entity.
  7. If the ignition interlock service provider is out of compliance, corrective actions that will be taken, including penalty provisions and liquidated damages.
  8. The ignition interlock device must have security protections, including each device having the capability to record each event and provide visual evidence of any actual or attempted tampering, alteration, bypass or circumvention.
  9. The ignition interlock service provider will process the transition and ensure that continuous monitoring occurs if an ignition interlock device client requires transition of services.
  10. The ignition interlock service provider will self-certify, complete background checks and train technicians in compliance with the rules adopted by the department.
  11. The ignition interlock service provider must ensure that each service center is adequately staffed and equipped to provide all ignition interlock device support services. Mobile service operations based at a service center are permitted, except that a tow truck may not be used for mobile service. A service center may not provide services for more than one ignition interlock service provider.
  12. The ignition interlock service provider must train clients on how to use the ignition interlock device.
  13. A transition plan that will ensure continuous monitoring is achieved if the ignition interlock service provider leaves this state.
  14. Require the ignition interlock service provider to have and maintain insurance that is approved by the department.
  15. A procedure for progressive discipline of an employee, agent or subcontractor of an ignition interlock service provider who fails to comply with the requirements of this chapter or of the ignition interlock service provider contract.
  16. Require client information and financial records to be maintained at a commercial business location in this state that is not a residence and that has posted business hours where the department may access the records. On termination or expiration of the contract, the ignition interlock service provider must submit all client information to the department.
  17. The ignition interlock service provider may not charge a client to replace a defective ignition interlock device.
  18. The ignition interlock device must take a digital image identifying the client who is providing the breath sample and the digital image must include the date and time that the breath sample was provided.

19. The ignition interlock service provider must comply with all county and municipal zoning regulations for commercial businesses and provide a corresponding business license to the department.

20. The ignition interlock service provider must clearly post all client fees for the installation, removal and inspection of the certified ignition interlock device.

J. If the director has reasonable cause to believe that a person who is a party to an ignition interlock service provider contract pursuant to this article is violating any provision of this chapter, the director shall immediately issue and mail a cease and desist order to the person's last known address.

K. On receipt of the cease and desist order, the person shall immediately cease and desist, or cease and desist as provided in the contract between the department and the ignition interlock service provider, from further engaging in any activity that is not authorized pursuant to this chapter and that is specified in the cease and desist order.

L. On failure of the person to comply with the cease and desist order, the director may conduct a hearing pursuant to this section.

#### **28-1469. Ignition interlock device fund**

A. The ignition interlock device fund is established consisting of monies deposited pursuant to section 28-1462, subsection H. The department shall administer the fund. Monies in the fund must be used by the department for administering this article, including compliance measures, audits and investigating complaints that are related to ignition interlock devices and ignition interlock service providers.

B. The monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations.

#### **41-1061. Contested cases; notice; hearing; records**

A. In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. Unless otherwise provided by law, the notice shall be given at least twenty days before the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter on application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to participate in a settlement conference or mediation unless both parties or the hearing officer decline to set a settlement conference or mediation.

D. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. If there is no genuine issue of material fact, a party may seek disposition of the case by motion.

E. Unless precluded by law, and except as to claims for compensation and benefits under title 23, chapter 6, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

F. The record in a contested case shall include:

1. All pleadings, motions and interlocutory rulings.
2. Evidence received or considered.
3. A statement of matters officially noticed.
4. Objections and offers of proof and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion or report by the officer presiding at the hearing.
7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

G. Oral proceedings or any part of the proceedings shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of the transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the agency.

H. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

#### **41-1062. Hearings; evidence; official notice; power to require testimony and records; rehearing**

A. Unless otherwise provided by law, in contested cases the following shall apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence

required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency.

2. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. Prehearing depositions and subpoenas for the production of documents may be ordered by the officer presiding at the hearing, provided that the party seeking such discovery demonstrates that the party has reasonable need of the deposition testimony or materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in the superior courts of the state of Arizona, unless otherwise provided by law or agency rule. Notwithstanding the provisions of section 12-2212, no subpoenas, depositions or other discovery shall be permitted in contested cases except as provided by agency rule or this paragraph.

B. Except when good cause exists otherwise, the agency shall provide an opportunity for a rehearing or review of the decision of an agency before such decision becomes final. Such rehearing or review shall be governed by agency rule drawn as closely as practicable from rule 59, Arizona rules of civil procedure, relating to new trial in superior court.

#### **41-1063. Decisions and orders**

Unless otherwise provided by law, any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

#### **41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal**

A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

#### **41-1065. Hearing on denial of license or permit**

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days

after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by section 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

**41-1066. Compulsory testimony; privilege against self-incrimination**

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person which would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege prior to the production of the testimony or papers.

B. If a person asserts his privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, it may, with the prior written approval of the attorney general, issue a written order compelling the testimony or production of documents in proceedings and investigations before the agency or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing his private papers.

**41-1067. Applicability of article**

This article only applies to contested cases of agencies that are exempt from article 10 of this chapter as provided in section 41-1092.02.

**41-1072. Definitions**

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

**ARTICLE 5. ADMINISTRATIVE HEARINGS**

**R17-1-501. Definitions**

The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
  - a. Advance notice to participants of record,
  - b. An opportunity for witnesses to testify under oath, and
  - c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed under these rules.
3. "Affidavit" means a declaration or statement of facts made:
  - a. In writing, and
  - b. Under oath or affirmation.

4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
5. "Attorney" means:
  - a. An individual who is an active member in good standing with the State Bar of Arizona,
  - b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, or
  - c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.
6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
7. "Deposition" means a witness' testimony:
  - a. Given under oath or affirmation,
  - b. Brought out by another person's oral or written questions, and
  - c. Reduced to writing for a proceeding.
8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
10. "Executive Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
11. "In writing" means:
  - a. An original document,
  - b. A photocopy,
  - c. A facsimile, or
  - d. An electronic mail message.
12. "Motion" means a written or oral proposal for consideration and action filed by a person with the Executive Hearing Office.
13. "Participant of record" means:
  - a. A petitioner or a respondent;
  - b. An attorney representing a petitioner or respondent; or
  - c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.
14. "Petitioner" means a person or entity that requests an administrative hearing or a summary review from the Executive Hearing Office.
15. "Respondent" means a person against whom relief is sought in an Executive Hearing Office proceeding.
16. "Summary review" means an Executive Hearing Office proceeding conducted under A.R.S. § 28-1385(L).
17. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

**R17-1-502. Request for Hearing**

- A. A petitioner or petitioner's attorney shall file a request for a hearing:
  1. By mail or hand delivery to the Executive Hearing Office's street address:  
Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 3737 N. 7th St., Suite 160, Phoenix, AZ 85014-5017;
  2. By fax to (602) 241-1624; or
  3. By e-mail to the Executive Hearing Office's electronic mail address: hearingoffice@azdot.gov; and
  4. Timeliness of filing is determined as of the date the Executive Hearing Office receives a request for hearing.
- B. A request for hearing shall be submitted to the Executive Hearing Office within 15 days of the date of an agency action notice.
- C. A request for a hearing shall include the petitioner's name, mailing address, and telephone number.

**R17-1-503. Notice of Hearing**

- A. If a petitioner timely files a request for a hearing as provided under R17-1-502, the Executive Hearing Office shall send a notice of hearing to the petitioner's mailing address in the request for hearing and to any other participant of record.
- B. The notice of hearing shall state the:
  1. Time, date, and place of the administrative hearing;
  2. Type of administrative hearing; and
  3. Statutory authority for the administrative hearing.

**R17-1-504. Representation**

- A. Prior to any appearance, a petitioner's or respondent's attorney licensed in a state other than Arizona, shall file with, and obtain approval from, the Executive Hearing Office the following documentation:
  - 1. An original motion to appear pro hac vice,
  - 2. The Notice of Receipt of Complete Application from the State Bar of Arizona, and
  - 3. The original certificate of good standing from the licensing State Bar.
- B. Documentation under subsection (A) shall be filed with the Executive Hearing Office at least five business days before date of appearance.
- C. Non-compliance with this Section shall result in the exclusion of a petitioner's or respondent's attorney licensed in a state other than Arizona from participation in an administrative hearing.

**R17-1-505. Administrative Hearing Procedure**

- A. An administrative law judge shall preside at an administrative hearing and shall:
  - 1. Administer oaths or affirmations;
  - 2. Conduct fair and impartial hearings;
  - 3. Have the parties state orally at the hearing their positions on the issues;
  - 4. Rule on motions filed under R17-1-508;
  - 5. Maintain an administrative hearing record;
  - 6. Issue a written decision, including findings of fact and conclusions of law, based on the record, and
  - 7. Sustain an agency action supported by the record, state and administrative law.
- B. In addition to the requirements of subsection (A), an administrative law judge may:
  - 1. Issue a subpoena for the attendance of a relevant witness or for the production of relevant documents or things, and
  - 2. Question a witness.
- C. An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).
- D. A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.
- E. A participant of record shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:
  - 1. All participants of record are present;
  - 2. Communication is during a scheduled proceeding, where an absent participant of record fails to appear after proper notice; or
  - 3. Communication is by written motion with copies to all participants of record.
- F. At the request of a participant of record or at the judge's discretion, an administrative law judge may order a witness excluded from the hearing room except:
  - 1. A participant of record, or
  - 2. A person whose presence is shown to be essential to the presentation of a participant of record's case.

**R17-1-506. Administrative Hearing Evidence**

- A. A.R.S. §§ 41-1062(A) applies to evidence offered in an administrative hearing.
- B. The administrative law judge may admit a witness' deposition or affidavit and determine its evidentiary weight. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.

**R17-1-507. Time Computation**

In computing a time period under this Article, the Executive Hearing Office shall:

- 1. Exclude the day of the act triggering the period;
- 2. If the last day is a Saturday, Sunday, or legal holiday, extend the period to the end of the next business day;
- 3. If the period is 10 days or less, count only the business days; and
- 4. If service is by mail, extend the period by five days.

**R17-1-508. Motion Practice**

- A. A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis, and the legal authority for the requested relief.
  - 1. For a pre-hearing motion, a party or a party's attorney shall:
    - a. Make the motion in writing, and
    - b. File the motion with the Executive Hearing Office at least five business days before the administrative hearing.
  - 2. For a motion made at an administrative hearing:

- a. A party or a party's attorney may make the motion orally, and
  - b. The administrative law judge may require the party or the party's attorney to file the motion in writing.
- B.** An administrative law judge may include a ruling on a motion in an administrative hearing decision.

**R17-1-509. Subpoena Issuance**

- A.** In connection with an administrative hearing, an administrative law judge may issue a subpoena to compel the attendance of a witness or the production of documents or things.
- 1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
  - 2. An administrative law judge has discretion to issue or deny a subpoena based on the:
    - a. Relevance of the evidence sought,
    - b. Reasonable need for the evidence sought, and
    - c. Timeliness of the request.
- B.** A party or a party's attorney requesting a subpoena shall:
- 1. Draft the subpoena in the correct format, including:
    - a. The caption and docket number of the matter;
    - b. A list of documents or things to be produced;
    - c. The full name and address of:
      - i. The custodian of the documents or things listed, or
      - ii. The person ordered to appear;
    - d. The time, date, and place to appear or to produce documents or things; and
    - e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
  - 2. Obtain an administrative law judge's signature on the subpoena,
  - 3. Ensure service of the subpoena on the person named in the subpoena under subsection (C), and
  - 4. Bear all subpoena-related costs.
- C.** Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
- 1. Is at least age 18 and is not a party to the administrative hearing;
  - 2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
  - 3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
  - 4. Files with the Executive Hearing Office a proof of service, signed by the person who served the subpoena, certifying:
    - a. The date of service,
    - b. The manner of service, and
    - c. The name of the person served.
- D.** A party or a person served with a subpoena who objects to the subpoena or a portion of the subpoena, may file an objection in writing with the Executive Hearing Office. The party or person served with the subpoena shall:
- 1. State in the objection the reasons for objecting; and
  - 2. File the objection:
    - a. Within five days after service of the subpoena; or
    - b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.
- E.** An administrative law judge may quash or modify a subpoena if:
- 1. The subpoena is unreasonable or imposes an undue burden, or
  - 2. The evidence sought may be obtained by another method.
- F.** Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

**R17-1-510. Document Filing**

- A.** A document filed in an Executive Hearing Office proceeding shall state:
- 1. The description and title of the proceeding,
  - 2. The name of the party filing the document,
  - 3. The date the document is signed,

4. The title and address of the document's signer, and
  5. If applicable, the attorney's name, state bar number, law firm, address, and telephone number.
- B.** A party or a party's attorney shall sign a document filed with the Executive Hearing Office. By signing, the signer certifies that:
1. The signer read the document;
  2. The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
  3. The document is not filed to harass, delay, or needlessly increase the cost of the Executive Hearing Office proceeding.
- C.** A document is filed as of the date the Executive Hearing Office receives the document.

**R17-1-511. Continuing an Administrative Hearing**

- A.** An administrative hearing participant of record requesting a continuance shall file the request with the Executive Hearing Office at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.
- B.** An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance.
- C.** An administrative law judge shall not grant a request for continuance which is untimely unless the participant of record establishes good cause for the delay in filing the request.

**R17-1-512. Rehearing and Judicial Review**

- A.** A party may file a written motion for rehearing with the executive hearing office, stating in detail the reasons a rehearing should be granted.
- B.** Unless otherwise provided by statute, a motion for rehearing is timely if received by the Executive Hearing Office within the later of:
  1. Fifteen days after the date of in-person service of the administrative hearing decision, or
  2. Fifteen days after the mailing date of the administrative hearing decision.
- C.** A timely motion for rehearing stays an agency action, other than:
  1. A summary suspension under A.R.S. § 41-1064(C), or
  2. An agency action sustained under subsection (J).
- D.** An administrative law judge may grant a rehearing for any of the following reasons materially affecting a party's rights:
  1. Irregularity in the proceedings of the Arizona Department of Transportation or the Division, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
  2. Misconduct of the Arizona Department of Transportation or the Division, its staff, an administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
  7. That the administrative hearing decision is a result of passion or prejudice; or
  8. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** An administrative law judge may affirm or modify an administrative hearing decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying an administrative hearing decision or granting a rehearing shall specify the grounds for the order.
- F.** An administrative law judge may order a rehearing for a reason in subsection (D).
- G.** An administrative law judge may require the filing of written briefs on the issues raised in a motion for rehearing.
- H.** 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. An administrative law judge may extend this period for a maximum of 20 days for good cause as described in subsection (I) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative law judge.
- I.** An administrative law judge may extend the time limits in subsections (A) and (H) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:

1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.
- J. An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing if the administrative law judge makes specific findings that:
1. The public health, safety, and welfare require immediate effectiveness of the administrative hearing decision; and
  2. A rehearing of the decision is impractical, unnecessary, or contrary to the public interest.
- K. A party may appeal or request judicial review of a final administrative hearing decision in the Superior Court of Arizona as provided by statute.

**R17-1-513. Summary Review of an Administrative Suspension Order Under A.R.S. § 28-1385**

- A. A petitioner issued a driving privilege suspension order under A.R.S. § 28-1385, may request summary review instead of a hearing.
1. The requirements of R17-1-502 apply to a summary review request.
  2. The petitioner or the petitioner's attorney may include with the summary review request a written statement of:
    - a. The reasons why the Division should not suspend the petitioner's driving privilege, and
    - b. Reasons to find that at least one issue in subsections (C)(1) through (C)(3) is not met by the affidavit filed by a law enforcement officer with the Department.
- B. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:
1. Conduct the summary review without the petitioner's presence,
  2. Examine the documents in the Executive Hearing Office case file, and
  3. Issue a written summary review decision sustaining or voiding the suspension order.
- C. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:
1. Whether the law enforcement officer's certified report reflects the officer had reasonable grounds to believe the petitioner was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;
  2. Whether the law enforcement officer's certified report reflects the officer placed the petitioner under arrest for a violation of A.R.S. §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner complied with A.R.S. § 28-1321;
  3. Whether the law enforcement officer's certified report reflects petitioner's test results indicating at least the applicable alcohol concentration stated in A.R.S. § 28-1385; and
  4. Whether the petitioner's written statement of the reasons why the Division should not suspend the petitioner's driving privilege provides convincing evidence that at least one issue in subsections (C)(1) through (C)(3) was not met.

**R17-1-514. Maintaining Administrative Hearing Decorum**

- A. All hearings are open to the public, however a person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing.
- B. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.

**R17-5-615. Rolling Retest; Missed Rolling Retest; Extension of Ignition Interlock Period**

- A. A manufacturer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during the time period prescribed in subsection (E).
- B. A CIID shall have the capability to require a rolling retest and meet the requirements of a rolling retest. A person shall be prompted for the first rolling retest within five to 15 minutes after the initial test required to start an engine, and the device shall prompt for additional rolling retests at random intervals of up to 30 minutes after each previously requested and passed rolling retest.
- C. A certified ignition interlock device shall:
1. Emit a warning light, tone, or both, to alert a person that a rolling retest is required;
  2. Allow a period of six minutes after the warning light, tone, or both, to allow a person to take a rolling retest;
  3. Require a person to perform a new test to restart an engine if it is switched off during or after a rolling retest warning;

4. Allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test, except when a rolling retest is in progress;
  5. Use the set point value for startups and retests;
  6. Record, in its data storage system, the result of each rolling retest performed by a person during the person's drive cycle, and any valid and substantiated missed rolling retests; and
  7. Immediately require another rolling retest each time a person refuses to perform a requested rolling retest.
- D. Until a person successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the person to perform the requested rolling retest.
  - E. The Department shall count one missed rolling retest for a person who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the person providing a valid and substantiated breath sample within six minutes.
  - F. Failure to take a rolling retest when a person's breath alcohol concentration is equal to or exceeds the set point shall not sound the vehicle horn, nor any type of siren, bell, whistle or any device emitting a similar sound, or any unreasonable loud or harsh sound that is audible outside of the vehicle, and shall not cause the engine of the vehicle to shut off.
  - G. The Department shall extend a person's ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of three consecutive missed rolling retests that occur within an 18-minute time frame during a drive cycle.
  - H. If during one drive cycle, a person who is at least 21 years of age, has two or more breath alcohol concentrations of 0.08 or more, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.
  - I. If during one drive cycle, a person who is under 21 years of age, has any breath alcohol concentration one or more times, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.
  - J. Except as provided in subsections (H) and (I), if during one drive cycle, a person has more than one violation as defined in R17-5-601, the Department shall extend a person's ignition interlock period for six months for each violation.

**R17-5-706. Calibration Check; Requirements**

- A. An IISP-certified technician shall inspect, maintain, and check each CIID for calibration accuracy and operational performance before the device is placed into, or returned to service.
- B. A person with a CIID installed on a motor vehicle is responsible for obtaining a calibration check of the CIID by the IISP's technician at the IISP's service center within every 77 to 90-day period after device installation, and every 77 to 90 days thereafter, during the person's ignition interlock period.
- C. An IISP-certified technician shall perform a calibration check at the IISP's service center at least once every 90 days after device installation, and at least every 90 days thereafter.
- D. The calibration check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
  1. Accuracy standards as prescribed under R17-5-603;
    - a. The device shall be calibrated before placed into, or returned to service.
    - b. The calibration test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The manufacturer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The calibration test result shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
  2. Anticircumvention standards and operational features as prescribed under R17-5-603.
- E. The calibration test referenced under subsection (D) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device, including the camera and its connection to the vehicle, shall be examined for evidence of tampering while it is still attached to the vehicle. An IISP shall document or photograph any evidence of tampering or circumvention and submit the documentation to the Department as required by these rules and A.R.S. Title 28, Chapter 4, Article 5.
- F. If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.

- G.** At least once every 90 days, a technician shall perform a physical inspection of the ignition interlock device, including an anticircumvention check, while it is still attached to the vehicle.
- H.** A technician shall perform a physical inspection of the ignition interlock device any time an early recall occurs.
- I.** If at any time an individual device model fails to meet the provisions of this Section, the manufacturer, IISP, or IISP-certified technician, as appropriate, shall either:
  - 1. Repair, recalibrate, and retest the device model to ensure that it does meet all applicable standards; or
  - 2. Remove the device model from service.

September 17, 2019

Mr. Ben Blink  
Government and Transportation Policy Advisor  
Office of the Governor  
1700 W. Washington St.  
Phoenix, AZ 85007

Dear Mr. Blink:

The Arizona Department of Transportation (ADOT) requests authorization to proceed with formal rulemaking to implement the following Ignition Interlock Program Rule Changes in 17 A.A.C. 5, Articles 6 and 7:

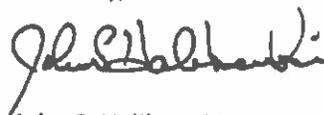
1. Rule changes recommended by the Department and approved by the Governor's Regulatory Review Council in a One-Year Rule Review on August 6, 2019 to improve the program; and
2. As required by A.R.S. § 41-1008(E), the ignition interlock device installation fee established in an exempt rulemaking in 2018, which must be included in a regular rulemaking to continue charging the fee after July 1, 2020.

An exemption from the rulemaking moratorium, E.O. 2019-01, will ensure the following:

- Compliance with A.R.S. 41-1008(E);
- Continued collection of the ignition interlock device installation fee after July 1, 2020 to fulfill the Department's budget obligations relating to the ignition interlock device installation fee;
- Compliance with the Administrative Procedure Act and the Department's rulemaking statutes;
- Continuous improvement of the Ignition Interlock Program; and
- Continuation of the public safety benefits of the Ignition Interlock Program.

Thank you for considering this request. Please contact me if you have any questions at (602) 712-7227.

Sincerely,



John S. Halikowski  
ADOT Director

Enc/Request for Rulemaking Exemption - Ignition Interlock Rules

## **Request for Rulemaking Exemption - Ignition Interlock Rules**

The Arizona Department of Transportation (ADOT) is requesting an exemption from the rulemaking moratorium, Executive Order 2019-01, to amend the Ignition Interlock Rules in 17 A.A.C. 5, Articles 6 and 7.

### **Background**

The Department completed an exempt rulemaking that was effective July 1, 2018 to implement Ignition Interlock Rule Changes to comply with Laws 2018, Chapter 105 and Laws 2017, Chapter 331. This rulemaking established an Ignition Interlock Device Installation Fee in rule that became effective on July 1, 2018. This legislation requires the Department to contract with Ignition Interlock Service Providers to establish ignition interlock service centers in each county of the state. A.R.S. § 41-1008(E) provides that an agency that establishes a fee by exempt rulemaking may collect the fee for two years, and must obtain approval of the fee from the Governor's Regulatory Review Council (GRRC) in a regular rulemaking to continue to collect the fee. As required by A.R.S. § 41-1095, the Department received GRRC approval on August 6, 2019 of a One-Year Rule Review of the Ignition interlock rules that were in the 2018 exempt rulemaking. This rule review recommended some changes to clarify and improve the rules and provided that the Department will conduct a regular rulemaking to make the changes and continue the the ignition interlock device installation fee.

### **Reasoning for seeking the rule exemption**

ADOT is requesting a rule exemption for these reasons:

1. To comply with state statutory requirements in A.R.S. §§ 41-1008(E), 28-1462, and 28-1465; and
2. To comply with an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.

### **Justification for the rule exemption**

The Department believes an exemption from the rulemaking moratorium is justified under Paragraphs (1)(f) and (1)(g) of Executive Order 2019-01. This will ensure that the Department complies with the rulemaking requirements of A.R.S. § 41-1008 relating to fees, and fulfills the Department's obligation relating to collection of the ignition interlock device installation fee included in the agency budget. The Department wants to complete the proposed course of action in the One-Year Rule Review approved by GRRC and to comply with the provisions of A.R.S. § 41-1008 in the Administrative Procedure Act. Approval of a rulemaking exemption and GRRC approval of rule changes will allow the Department to fulfill its commitment to GRRC and continue to charge the ignition interlock device installation fee, thereby generating revenue to support this important public safety program.



Jane Mcvay &lt;jmconvay@azdot.gov&gt;

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**Fwd: Rulemaking Moratorium Exemption**

1 message

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**Katy Proctor** <kproctor@azdot.gov>  
To: Jane McVay <jmconvay@azdot.gov>

Sat, Sep 21, 2019 at 3:38 AM

----- Forwarded message -----

**From:** Ben Blink <bblink@az.gov>  
**Date:** Fri, Sep 20, 2019 at 9:49 PM  
**Subject:** Re: Rulemaking Moratorium Exemption  
**To:** Katy Proctor <kproctor@azdot.gov>  
**CC:** Matt Clark <mclark2@azdot.gov>

Katy,

Thank you for the detailed explanation. So long as the fee amount does not increase this proposal for rule making complies with E.O. 2019-01 and you may proceed.

Ben

On Thu, Sep 19, 2019 at 3:21 PM Katy Proctor &lt;kproctor@azdot.gov&gt; wrote:

Greetings Ben,

Please find attached an electronic copy of a rulemaking moratorium request you should be receiving shortly. In a nutshell, this is the result of implementing recent interlock legislation through exempt rulemaking, as required by law. The Ignition Interlock Device Installation Fee was set at \$20 through exempt rulemaking, which requires a full regular rulemaking within two years or the fee will expire. At the same time, we completed the one-year rule review per exempt requirements and identified opportunities to clarify and improve the rules. While we could normally accomplish the clarifications through expedited rulemaking, since we have to do the fee through the regular process we thought it more transparent to proceed with both together. Please let me know if you have any questions or concerns, thanks for your assistance.

-Katy

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**Katy Proctor**  
Rules Administrator  
MD 140A, Room 192  
206 S. 17th Avenue  
Phoenix, AZ 85007  
602.712.7543  
azdot.gov

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**Ben Blink**  
Policy Advisor, Transportation and Technology Innovation  
Arizona Governor Doug Ducey  
1700 W. Washington St.  
Phoenix, AZ 85007  
O: 602.542.5351  
M: 602.935.4236

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**Katy Proctor**  
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**CITIZENS CLEAN ELECTIONS COMMISSION (R20-0501)**

Title 2, Chapter 20, Article 7, Use of Funds and Repayment

**Amend:** R2-20-702



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (R20-0501)**  
Title 2, Chapter 20, Article 7, Use of Funds and Repayment

**Amend:** R2-20-702

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### Summary:

As a reminder, at its November 5, 2019 Council Meeting, the Council voted to return a Citizens Clean Elections Commission (Commission) rulemaking as it related to R2-20-702 (Use of Campaign Funds).

In voting to return this portion of the Commission's rulemaking, the Council expressed concern as to the amended rule's clarity, conciseness, understandability, and effectiveness pursuant to A.R.S. § 41-1052(D)(4), particularly as the proposed rule language compared to the language found in A.R.S. § 16-948 related to permissible/impermissible contributions. In response, the Commission now submits a revised rulemaking pursuant to A.R.S. § 41-1052(C) and R1-6-206, seeking to delete section B of this rule in its entirety. This rule amendment would bring the rule into conformity with A.R.S. § 16-948 as amended by Proposition 306.

The Commission believes there is little consumer, economic, or small business impact. They indicate that the rule amendment may deprive voters of some candidates who might have run with clean funding, but benefit those voters who do not want candidates to be able to make purchases from political parties. They believe there is an impact on candidates who may have

preferred to run with clean funding, and, with further amendment, may have preferred with certainty as to what is permitted by the Clean Elections.

Stakeholders include candidates for state and legislative office, political parties, organizations that have tax status under Sections 501(a) of the internal revenue code, and the Commission.

The Commission states that the returned amendment is the least intrusive, least burdensome and least costly way of achieving the statute and rule's goals. In order to maintain the least intrusive, least costly, and least burdensome manner of approaching the rule, the Commission left those parts of the rule that were unaffected by Proposition 306 in place.

The Commission does anticipate some increase in compliance related work but does not anticipate any additional FTE's, nor additional costs, as the Commission already audits all candidates who chose to participate in the Clean Funding program. No political subdivision of this state is directly affected. The Commission does not anticipate any impact on private or public employment or small businesses. They state that if there was a small business impact, it would be an increase in compliance costs in order to ensure that the small business complies with A.R.S. § 16-948.

The Commission indicates that to the extent that political parties and a particular subgroup of tax exempt organizations are considered businesses, they may see less revenue under the rule as amended. However, parties are already prohibited by rule from profiting from the provision of goods and services.

The probable cost on private persons, the Commission believes, is if they choose to run as participating candidates under the Clean Funding program administered by the Commission, they will have a limitation on whom they can spend money with, in line with A.R.S. § 16-948.

### **Conclusion:**

Upon review, Council staff finds that the Commission's re-submitted rulemaking addresses the concerns the Council had at the November 5, 2019 Council Meeting. Council staff finds that as amended, the rule would be more clear, concise, understandable, and effective. Council staff recommends approval of this rulemaking.

As amended by Proposition 306, the Commission's exemption from the Administrative Procedure Act (APA) in A.R.S. § 16-965(C) was removed. Therefore, this rulemaking was submitted to GRRC for review and consideration pursuant to the APA.

Proposition 306 did not remove other language from A.R.S. § 16-956(C) regarding the Commission's rulemaking procedures and processes. For example, the statute still retains language that requires the Commission to propose and adopt rules in public meetings, with at least 60 days allowed for interested parties to comment after the rules are proposed.

While it appears A.R.S. § 16-956(C) outlines distinct rulemaking procedures for the Commission, it still requires that “[a]ny rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state’s office for publication in the Arizona administrative register.” Pursuant to the APA, final approval for rulemakings comes from either GRRC or the Attorney General. See A.R.S. § 41-1024(H) (“An agency shall not file a final rule with the secretary of state without prior approval from the council....”).

In addition to submitting this rulemaking package to Council staff, it is Council staff’s understanding that the draft Notice of Final Rulemaking was submitted to the Secretary of State’s office for publication and was published in the February 21, 2020 edition of the Administrative Register with an effective date of January 23, 2020. Notwithstanding publication of these Notices, it is Council staff’s opinion that the rules cannot be effective or enforced until they are given final approval by the Council pursuant to the APA. Therefore, Council staff encourages the Council to review the Commissions’s rulemaking submissions to determine compliance with the APA and the requirements outlined in A.R.S. § 41-1052 (Council review and approval).

Proposition 306 also did not remove language in A.R.S. § 16-956(D), which says that “[r]ules adopted by the commission are not effective until January 1 in the year following adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.” The Commission voted unanimously to make these rule amendments immediately effective.

It is Council staff’s opinion that the rule amendments cannot be immediately effective and enforceable until they are given final approval by the Council. Council staff has no objection to an immediate effective date due to the language in A.R.S. 16-956(D), and recommends that the rulemaking be approved with an immediate effective date. The rule amendments would be effective on the day the Commission files the Certificate of Approval for this rulemaking with the Secretary of State’s office after approval by the Council.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
**Amy B. Chan**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.azcleanelections.gov](http://www.azcleanelections.gov)

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March 9, 2020

Governor's Regulatory Review Council  
1501 N. 15<sup>th</sup> Ave.  
Phoenix, AZ 85007

**Re: Request for approval of amendment to A.A.C. R2-20-702**

Dear Councilmembers and Staff:

Pursuant to A.R.S. §§ 16-956(C), (D) and § 41-1024(C), please find the Arizona Citizens Clean Elections Commission's Amendment to A.A.C. R2-20-702 and economic impact statement.

January 23, 2020.

I request approval by the Council.

In summary:

- The record closed on January 23, 2020.
- The amendment does not relate to a 5-year-review report.
- The amendment does not establish a new fee.
- The amendment does not contain a fee increase.
- The rule was made immediately effective by the Commission on January 23, 2020 pursuant to A.R.S. § 16-956(D).
- The preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement.
- No written comments were received.

- No analysis of the amendments impact on competitiveness with other states was submitted.
- No material was incorporated by reference.
- Authorizing statutes include:
  - General: A.R.S § 16-956(A)(7)
  - Specific: A.R.S. §§ 16-948, -956, -957.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director



Arizona  
Secretary  
of State

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by Arizona  
Secretary of  
State  
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# Arizona Administrative REGISTER

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Vol. 26, Issue 8

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Rhonda Paschal

# From the Publisher

## ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

## ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

## WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

## LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

# Arizona Administrative REGISTER

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**PUBLISHER**  
SECRETARY OF STATE  
Katie Hobbs

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**ADMINISTRATIVE REGISTER**  
This publication is available online for free at [www.azsos.gov](http://www.azsos.gov).

**ADMINISTRATIVE CODE**  
A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

**PUBLICATION DEADLINES**  
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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# Participate in the Process

## Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

## Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

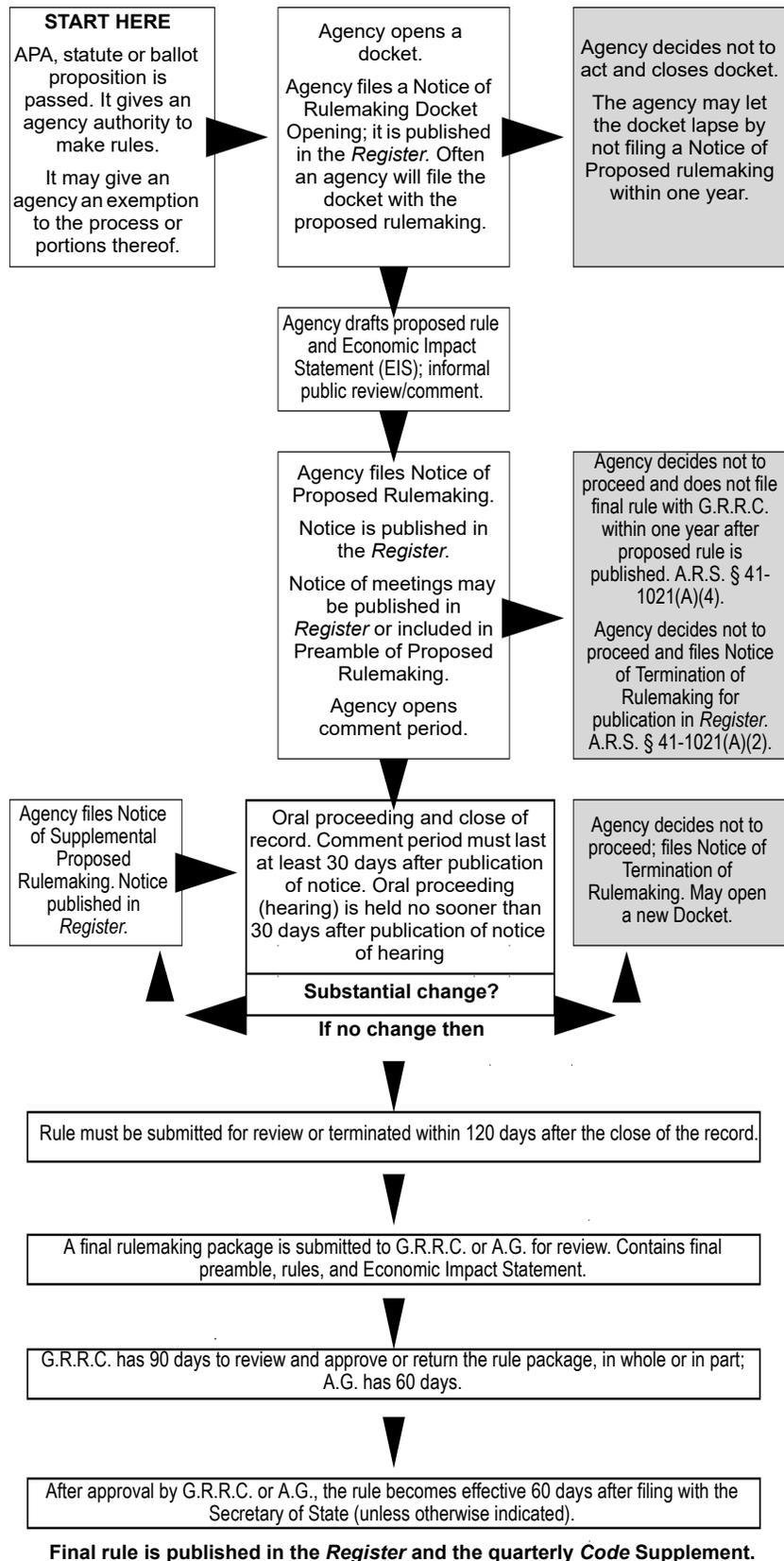
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

## Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

# Arizona Regular Rulemaking Process



## Definitions

**Arizona Administrative Code (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at [www.azsos.gov](http://www.azsos.gov).

**Arizona Administrative Register (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at [www.azsos.gov](http://www.azsos.gov).

**Administrative Procedure Act (APA):** A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at [www.azleg.gov](http://www.azleg.gov).

**Arizona Revised Statutes (A.R.S.):** The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at [www.azleg.gov](http://www.azleg.gov).

**Chapter:** A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

**Close of Record:** The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

**Code of Federal Regulations (CFR):** The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

**Docket:** A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

**Economic, Small Business, and Consumer Impact Statement (EIS):** The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

**Governor's Regulatory Review (G.R.R.C.):** Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

**Incorporated by Reference:** An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

**Federal Register (FR):** The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

**Session Laws or "Laws":** When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at [www.azleg.gov](http://www.azleg.gov).

**United States Code (U.S.C.):** The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

## Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

## About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.





ment, subject to its reservation of rights under The Clean Elections Act (A.R.S. §§ 16-940 to 16-961), Title 41, Chapter 6, and the Arizona and Federal Constitutions.

In addition to removing provisions of the R2-20-702(B) that conflict with A.R.S. § 16-948, the proposed amendment also removes language permitting certain spending of clean funding that the Council members believed were confusing, specifically language that expressly permitted certain activities under the Clean Elections Act.

- 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:**  
Not applicable
- 8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
These changes do not diminish a previous grant of authority to a political subdivision of this state.
- 9. **Summary of the economic, small business, and consumer impact:**  
As indicated in our prior filings with the Council, the Commission believes there is little consumer, economic, or small business impact. The rule amendment may deprive voters of some candidates who might have run with Clean Funding, but additionally, benefits those voters who do not want candidates to be able to make purchases from political parties. There is an impact on candidates who may have preferred to run with clean funding, and, with the further amendment, may have preferred certainty as to what is permitted by the Clean Elections. There is no economic or consumer or small business impact. Additionally, the further amendments recommended by Council member Sundt will likely increase compliance costs for the regulated community because the amendments remove guidance as to what is permissible under the Clean Election Act, which expressly permits expenditures for goods and services except those prohibited by A.R.S. § 16-948(C), (C)(1),(C)(2).
- 10. **A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking.**  
Not applicable
- 11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**  
None received
- 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:**  
Not applicable
  - c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
Not applicable
- 13. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**  
None
- 14. **Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
Not applicable
- 15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 7. USE OF FUNDS AND REPAYMENT

Section  
R2-20-702. Use of Campaign Funds

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702. Use of Campaign Funds

- A. No change
- ~~B. A participating candidate may: make a payment from the candidate's campaign bank account:
 
  - 1. To a political committee or civic organization or an unincorporated association. The payment is not a contribution if the payment is reasonable in relation to the value received.~~





Office of the Arizona Governor, by e-mail dated August 16, 2019.

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

February 6, 2020

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

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

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

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

Not applicable

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 2373, September 13, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 2345, September 13, 2019

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

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

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

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

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

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

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

Not applicable

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

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

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

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

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

No written or oral comments were received by the Commission.

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

Not applicable



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

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

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

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

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

No analysis was submitted.

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

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

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

Not applicable

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

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 5. ELEVATOR SAFETY**

Section

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

**ARTICLE 5. ELEVATOR SAFETY**

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

**A.** Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after ~~the effective date of this Section~~ August 6, 2009 shall comply with the ASME A17.1-2007 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2007, which are incorporated by reference. Except as stated in subsection (B), this incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed between May 5, 2009 and ~~the effective date of this Section~~ August 6, 2019, shall comply with ASME A17.1-2007 or, as an alternative, may comply with ASME A17.7-2007. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before May 5, 2009, shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007 or ASME 17.7-2007.

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



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the final exempt rule should be addressed to the agency proposing them.

Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING
TITLE 7. EDUCATION
CHAPTER 2. STATE BOARD OF EDUCATION

[R20-17]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) R7-2-619 Rulemaking Action Amend
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:
3. The effective date of the rules and the agency's reason it selected the effective date: January 27, 2020
4. A list of all notices published in the Register as specified in R1-1-409(A) that pertains to the record of the exempt rulemaking: Not applicable
5. The agency's contact person who can answer questions about the rulemaking: Name: Alicia Williams, Executive Director
6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:
7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material: Not applicable
8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state: Not applicable
9. The summary of the economic, small business and consumer impact, if applicable: The rules are not expected to have significant, if any, economic impact on small businesses.
10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable): Not applicable
11. A summary of the comments made regarding the rule and the agency response to them: The Board opened the rules at a regular meeting on October 28, 2019. A public hearing was held on November 18, 2019. The Board received an update on the rule at the December 13, 2019 regular Board meeting and closed the rule at the January 27, 2020



regular Board meeting. No public comments were received at any of these public meetings.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

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

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 6. CERTIFICATION**

Section  
R7-2-619. Renewal Requirements

**ARTICLE 6. CERTIFICATION**

**R7-2-619. Renewal Requirements**

- A. A certificate may be renewed within six months of its expiration date except that an individual holding multiple valid certificates may renew all certificates at one time in order to align the expiration dates of each certificate. Certificates being aligned shall be renewed at the same time as the certificate that will expire first. Individuals seeking to align certificates shall meet the renewal requirements for each certificate being aligned. Certificates that are renewed or aligned pursuant to this Section shall be valid for 12 years.
- B. A certificate may be renewed within one year after it expires. Individuals whose certificates have been expired for more than one year shall reapply for certification under the requirements in effect at the time of reapplication. Nothing in this Section shall imply that an individual may be employed in a position that requires certification after the expiration of the relevant certificate.
- C. Renewal of certificates requires the completion of continuing education credits after the most recent issuance or renewal of the certificate, except that continuing education credits completed during the valid term of the certificate that expires first meets the requirement of certificates being aligned. Fifteen hours of continuing education credits are required each year of the certificate term to renew a certificate, which may be accumulated in various increments per year prior to renewal. One hour of continuing education credit shall be equivalent to one clock hour of a professional development activity. Continuing education credits must relate to Arizona academic or professional educator standards or apply toward the attainment of an additional Arizona certificate, endorsement, or approved area, and may include training regarding suicide awareness and prevention; child abuse, human trafficking of children and the sexual abuse of children, including warning signs that a child may be a victim of child abuse, human trafficking, or sexual abuses; screening, intervention, accommodation, use of technology and advocacy for students with reading impairments, including dyslexia; or other training programs explicitly permitted by state law. Professional development that may be counted toward the required hours of continuing education credit shall consist of any of the following activities:
  - 1. Courses related to education or a subject area taught in Arizona schools, taken from an accredited institution. Each semester hour of courses shall be equivalent to 15 clock hours of professional development. The required documentation shall be an official transcript.
  - 2. Professional activities such as conferences and work- shops related to the profession of teaching or the field of public education. A maximum of 30 clock hours per year may be earned by attendance at professional conferences and workshops. The required documentation shall be a conference agenda and a statement or certificate from the sponsoring organization noting the clock hours earned.
  - 3. District-sponsored or school-sponsored in-services or activities which are specifically designed for professional development. The required documentation shall be written verification from the sponsoring district or school stating the dates of participation and the number of clock hours earned.
  - 4. Internships in business settings. The internship shall be based on an agreement between a business and a district or school with the stated objective of aligning teaching curriculum with workplace skills. A maximum of 80 clock hours may be earned through business internships. The required documentation shall be written verification by the sponsoring business and district or school stating the dates of participation and number of clock hours earned.
  - 5. Educational research. The research shall be sponsored by a research facility or an accredited institution or funded by a grant. The required documentation shall be the published report of the research or verification by the sponsoring agency; and a statement of the dates of participation and the number of clock hours earned.
  - 6. Serving in a leadership role of a professional organization that provides training, activities, or projects related to the profession of teaching or the field of public education. A maximum of 30 clock hours per year may be earned by serving in a leadership role of a professional organization. The required documentation shall be written verification by the governing body of the professional organization of the dates of service and clock hours earned.
  - 7. Serving on a visitation team for a school accreditation agency. A maximum of 60 clock hours per year may be earned by serving on a visitation team. The required documentation shall be written verification from the accreditation agency of the dates of service and clock hours earned.



- 8. ~~Completion of the process for certification by the National Board of Professional Teaching Standards. The required documentation shall be written verification from the National Board of Professional Teaching Standards and a statement from the employing district or school verifying the dates and the clock hours earned during the certification process.~~
- D. An individual holding a Standard teaching certificate, a standard administrative certificate, or other professional certificate may renew the certificate for 12 years upon completion of 15 hours of continuing education credits each year of the certificate term which may be accumulated in various increments per year prior to renewal or with ~~a verified current professional license as a counselor, social worker, psychologist or speech pathologist~~ one of the following:
  - 1. A valid professional license as a counselor, social worker, psychologist, or speech pathologist issued by the appropriate state agency in this state or in another state;
  - 2. A valid certificate issued by the National Board of Professional Teaching Standards; or
  - 3. A valid Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Language Hearing Association.
- E. An individual who is employed by a school or school district at the time of renewal shall submit the required documentation of professional development to the district superintendent, director of personnel, or other designated administrator for verification. A certified individual who is not employed by a school or school district at the time of renewal shall submit the required documentation of professional development to a county school superintendent, the dean of a college of education, or the Department for verification. The school or district official, county school superintendent, or the dean of a college of education shall verify on forms provided by the Department the number of hours of professional development completed by the individual during the valid period of the certificate being renewed.
- F. The Department shall issue a Standard teaching certificate of the same type.
- G. Notwithstanding any other provision in this section, an individual with a valid fingerprint clearance card who has had a certificate or certificates expire for at least two years but not more than 10 years may renew the expired certificate or certificates and any endorsements or approved areas if the individual had 10 or more years of verified full-time experience in this state in the area the individual is seeking renewed certification and is in good standing. Standard certificates issued to that individual pursuant to this subsection shall be identical to the expired certificate or certificates.



**NOTICES OF RULEMAKING DOCKET OPENING**

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

**NOTICE OF RULEMAKING DOCKET OPENING  
DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSING**

[R20-18]

- 1. Title and its heading:** 9, Health Services
- Chapter and its heading:** 10, Department of Health Services - Health Care Institutions: Licensing
- Articles and their headings:** 3, Behavioral Health Inpatient Facilities  
4, Nursing Care Institutions  
7, Behavioral Health Residential Facilities  
10, Outpatient Treatment Centers  
13, Behavioral Health Specialized Transitional Facility  
14, Substance Abuse Transitional Facilities  
17, Unclassified Health Care Institutions
- Section numbers:** R9-10-306, R9-10-406, R9-10-706, R9-10-1011, R9-10-1305, R9-10-1405, R9-10-1411, and R9-10-1705 (*The Department may add, delete, or modify other Sections, as necessary.*)

**2. The subject matter of the proposed rules:**  
Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10. Laws 2019, Ch. 215, § 4 requires the Department to allow "a person who is employed at a health care institution that provides behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide behavioral health or other related health care services pursuant to all applicable department rules." After receiving an exception from the rulemaking moratorium established by Executive Order 2019-01, the Department is revising the rules in 9 A.A.C. Title 10 to comply with requirements in Laws 2019, Ch. 215, § 4. The proposed amendments will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

**3. A citation to all published notices relating to the proceeding:**  
None

**4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Kathryn McCanna, Branch Chief  
Address: Department of Health Services  
Public Health Licensing Services  
150 N. 18th Ave., Suite 450  
Phoenix, AZ 85007  
Telephone: (602) 364-2841  
Fax: (602) 364-4808  
E-mail: Kathryn.McCanna@azdhs.gov  
or  
Name: Stephanie Elzenga, Acting Chief  
Address: Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007  
Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: Stephanie.Elzenga@azdhs.gov



**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined. No oral proceedings have been scheduled at this time.

**6. A timetable for agency decisions or other action on the proceeding, if known:**

To be announced in the Notice of Proposed Expedited Rulemaking

**NOTICE OF RULEMAKING DOCKET OPENING  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT**

[R20-19]

- 1. Title and its heading:** 18, Environmental Quality
- Chapter and its heading:** 8, Department of Environmental Quality - Hazardous Waste Management
- Articles and their headings:** 2, Hazardous Wastes
- Section numbers:** R18-8-260 through R18-8-280 *(As part of this rulemaking, the Department may add, delete, or modify Sections as necessary.)*

- 2. The subject matter of the proposed rule:**  
The Department of Environmental Quality is considering amendments to state hazardous waste rules to incorporate new federal regulations and make technical changes.

- 3. A citation to all published notices relating to the proceeding:**  
None

**4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Mark Lewandowski  
 Address: Department of Environmental Quality  
 1110 W. Washington St.  
 Phoenix, AZ 85007  
 Telephone: (602) 771-2230  
 Fax: (602) 771-4272  
 E-mail: Lewandowski.Mark@azdeq.gov

**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

To be published in the Notice of Proposed Rulemaking

**6. A timetable for agency decisions or other action on the proceeding, if known:**

To be determined



## NOTICES OF SUBSTANTIVE POLICY STATEMENT

The *Administrative Procedure Act* (APA) requires the publication of Notices of Substantive Policy Statement issued by agencies (A.R.S. § 41-1013(B)(9)).

Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's

internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

### NOTICE OF SUBSTANTIVE POLICY STATEMENT REGISTRAR OF CONTRACTORS

[M20-08]

**1. Title of the Substantive Policy Statement and the substantive policy statement number by which the substantive policy statement is referenced:**

Title: Recovery Fund Actual Damages and 3rd Party Payments  
Notice of Substantive Policy Statement 2020.01

**2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

Issued and Effective February 5, 2020.

**3. Summary of the contents of the substantive policy statement:**

This policy statement clarifies the Registrar's policy regarding actual damages awarded from the Residential Contractor's Recovery Fund. The policy statement explains that actual damages are not reduced by payments made by third parties to a licensed contractor on behalf of a homeowner.

**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

Authority is found in A.R.S. § 32-1132.01.

**5. A statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

**6. The agency contact person who can answer questions about the substantive policy statement:**

Name: Joseph Citelli  
Address: Registrar of Contractors  
1700 W. Washington St., Suite 105  
Phoenix, AZ 85007  
Telephone: (602) 771-6790  
Fax: (602) 364-0416  
E-mail: [joseph.citelli@roc.az.gov](mailto:joseph.citelli@roc.az.gov)  
Web site: [www.roc.az.gov](http://www.roc.az.gov)

**7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**

This policy statement is published on the Registrar's website and can be accessed for free.

### NOTICE OF SUBSTANTIVE POLICY STATEMENT WATER INFRASTRUCTURE FINANCE AUTHORITY

[M20-09]

**1. Title of the Substantive Policy Statement and the substantive policy statement number by which the substantive policy statement is referenced:**

Document Title: WIFA Advisory Board and Committee Meetings  
Identification Number: I.6

**2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

Original Issue Date: April 20, 2011  
Effective Date: December 18, 2019

**3. Summary of the contents of the substantive policy statement:**

The Authority issued a policy to generate and process resolutions considered by the WIFA Advisory Board and approved by the Arizona Finance Authority Board of Directors.



**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

Not applicable

**5. A statement as to whether the substantive policy statement is a new statement or a revision:**

This is a revised substantive policy statement.

**6. The agency contact person who can answer questions about the substantive policy statement:**

Name: Dan Dialessi  
Address: Water Infrastructure Finance Authority  
100 N. 7th Ave., Suite 130  
Phoenix, AZ 85007  
Telephone: (602) 364-1310  
Fax: (602) 364-1327  
E-mail: [ddialessi@azwifa.gov](mailto:ddialessi@azwifa.gov)  
Web site: [www.azwifa.gov](http://www.azwifa.gov)

**7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**

Copies are available at the Water Infrastructure Finance Authority, 100 N. 7th Ave., Suite 130, Phoenix, AZ 85007 or from the person listed above.

**NOTICE OF SUBSTANTIVE POLICY STATEMENT  
WATER INFRASTRUCTURE FINANCE AUTHORITY**

[M20-10]

**1. Title of the Substantive Policy Statement and the substantive policy statement number by which the substantive policy statement is referenced:**

Document Title: Legislative Representative Designation  
Identification Number: I.8

**2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

Original Issue Date: January 11, 2000  
Effective Date: December 18, 2019

**3. Summary of the contents of the substantive policy statement:**

The Authority issued a policy to generate and process resolutions considered by the WIFA Advisory Board and approved by the Arizona Finance Authority Board of Directors.

**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

Not applicable

**5. A statement as to whether the substantive policy statement is a new statement or a revision:**

This is a revised substantive policy statement.

**6. The agency contact person who can answer questions about the substantive policy statement:**

Name: Dan Dialessi  
Address: Water Infrastructure Finance Authority  
100 N. 7th Ave., Suite 130  
Phoenix, AZ 85007  
Telephone: (602) 364-1310  
Fax: (602) 364-1327  
E-mail: [ddialessi@azwifa.gov](mailto:ddialessi@azwifa.gov)  
Web site: [www.azwifa.gov](http://www.azwifa.gov)

**7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**

Copies are available at the Water Infrastructure Finance Authority, 100 N. 7th Ave., Suite 130, Phoenix, AZ 85007 or from the person listed above.



**NOTICE OF SUBSTANTIVE POLICY STATEMENT  
WATER INFRASTRUCTURE FINANCE AUTHORITY**

[M20-11]

- 1. Title of the Substantive Policy Statement and the substantive policy statement number by which the substantive policy statement is referenced:**  
Document Title: Public Records Request Policy  
Identification Number: I.16
- 2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**  
Original Issue Date: April 24, 2004  
Effective Date: December 18, 2019
- 3. Summary of the contents of the substantive policy statement:**  
The Authority issued a policy to generate and process resolutions considered by the WIFA Advisory Board and approved by the Arizona Finance Authority Board of Directors.
- 4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**  
Not applicable
- 5. A statement as to whether the substantive policy statement is a new statement or a revision:**  
This is a revised substantive policy statement.
- 6. The agency contact person who can answer questions about the substantive policy statement:**  
Name: Dan Dialessi  
Address: Water Infrastructure Finance Authority  
100 N. 7th Ave., Suite 130  
Phoenix, AZ 85007  
Telephone: (602) 364-1310  
Fax: (602) 364-1327  
E-mail: [ddialessi@azwifa.gov](mailto:ddialessi@azwifa.gov)  
Web site: [www.azwifa.gov](http://www.azwifa.gov)
- 7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**  
Copies are available at the Water Infrastructure Finance Authority, 100 N. 7th Ave., Suite 130, Phoenix, AZ 85007 or from the person listed above.



GOVERNOR EXECUTIVE ORDER

Executive Order 2020-02 is being reproduced in each issue of the Administrative Register as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2020-02

Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies

[M20-01]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, protecting the public health, peace and safety of the residents of Arizona is a top priority of state government; and

WHEREAS, in 2015, the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order, and renewed the moratorium in 2016, 2017, 2018 and 2019; and

WHEREAS, the State of Arizona eliminated or improved 637 burdensome regulations in 2019 and a total of 2,289 needless regulations have been eliminated or improved since 2015; and

WHEREAS, estimates show these eliminations saved job creators \$53.9 million in operating costs in 2019 and a total of over \$134.3 million in savings since 2015; and

WHEREAS, in 2019, for every one new necessary rule added to the Administrative Code, five have been repealed or improved; and

WHEREAS, approximately 354,000 private sector jobs have been added to Arizona since January 2015; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer-service-oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

- 1. A State agency subject to this Order shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
c. To prevent a significant threat to the public health, peace or safety.
d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
f. To comply with a state statutory requirement.
g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
i. To address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent or abusive activities perpetrated against an agency.
j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. A State agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Office of the Governor at least three existing rules to eliminate for every one additional rule requested by the agency.



3. A State agency that submits a rulemaking exemption request pursuant to this Order shall include with their request an analysis of how small businesses may be impacted by any newly proposed rules or rule modifications.
4. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately.
5. A State agency that issues occupational or professional licenses shall prominently post on the agency's website landing page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using these policies. State agencies should provide information that applies to all applicants, but have a designated area on such landing page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for these applicant groups to receive their license. Examples of reduced licensing burdens include universal recognition of out-of-state licenses, availability of temporary licenses, fee waivers, exam exemptions and/or allowing an applicant to substitute military education or experience for licensing requirements. A landing page feature may link to an internal agency web page with more information, if necessary. All information must be easy to locate and written in clear and concise language.
6. All state agencies that are required to issue occupational or professional licenses by universal recognition (established by section 32-4302, Arizona Revised Statutes) must track all applications received for this license type. Before any agency denies a professional or occupational license applied for under section 32-4302, Arizona Revised Statutes, the agency shall submit the application and justification for denial to the Office of the Governor for review before any official action is taken by the agency. The Office of the Governor should be notified of any required timeframes, whether in statute or rule, for approval or denial of the license by the agency.
7. For the purposes of this Order, the term "State agencies" includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
8. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule" and "rulemaking" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

**IN WITNESS THEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

**Douglas A. Ducey**  
**GOVERNOR**

**DONE** at the Capitol in Phoenix on this 13th day of January in the Year Two Thousand and Twenty and of the Independence of the United States of America the Year Two Hundred and Forty-Fourth.

**ATTEST:**

**Katie Hobbs**  
**SECRETARY OF STATE**

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**REGISTER INDEXES**

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The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

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Abbreviations for rulemaking activity in this Index include:

**PROPOSED RULEMAKING**

PN = Proposed new Section  
PM = Proposed amended Section  
PR = Proposed repealed Section  
P# = Proposed renumbered Section

**SUPPLEMENTAL PROPOSED RULEMAKING**

SPN = Supplemental proposed new Section  
SPM = Supplemental proposed amended Section  
SPR = Supplemental proposed repealed Section  
SP# = Supplemental proposed renumbered Section

**FINAL RULEMAKING**

FN = Final new Section  
FM = Final amended Section  
FR = Final repealed Section  
F# = Final renumbered Section

**SUMMARY RULEMAKING****PROPOSED SUMMARY**

PSMN = Proposed Summary new Section  
PSMM = Proposed Summary amended Section  
PSMR = Proposed Summary repealed Section  
PSM# = Proposed Summary renumbered Section

**FINAL SUMMARY**

FSMN = Final Summary new Section  
FSMM = Final Summary amended Section  
FSMR = Final Summary repealed Section  
FSM# = Final Summary renumbered Section

**EXPEDITED RULEMAKING****PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section  
PEM = Proposed Expedited amended Section  
PER = Proposed Expedited repealed Section  
PE# = Proposed Expedited renumbered Section

**SUPPLEMENTAL EXPEDITED**

SPEN = Supplemental Proposed Expedited new Section  
SPEM = Supplemental Proposed Expedited amended Section  
SPER = Supplemental Proposed Expedited repealed Section  
SPE# = Supplemental Proposed Expedited renumbered Section

**FINAL EXPEDITED**

FEN = Final Expedited new Section  
FEM = Final Expedited amended Section  
FER = Final Expedited repealed Section  
FE# = Final Expedited renumbered Section

**EXEMPT RULEMAKING****EXEMPT**

XN = Exempt new Section  
XM = Exempt amended Section  
XR = Exempt repealed Section  
X# = Exempt renumbered Section

**EXEMPT PROPOSED**

PXN = Proposed Exempt new Section  
PXM = Proposed Exempt amended Section  
PXR = Proposed Exempt repealed Section  
PX# = Proposed Exempt renumbered Section

**EXEMPT SUPPLEMENTAL PROPOSED**

SPXN = Supplemental Proposed Exempt new Section  
SPXR = Supplemental Proposed Exempt repealed Section  
SPXM = Supplemental Proposed Exempt amended Section  
SPX# = Supplemental Proposed Exempt renumbered Section

**FINAL EXEMPT RULEMAKING**

FXN = Final Exempt new Section  
FXM = Final Exempt amended Section  
FXR = Final Exempt repealed Section  
FX# = Final Exempt renumbered Section

**EMERGENCY RULEMAKING**

EN = Emergency new Section  
EM = Emergency amended Section  
ER = Emergency repealed Section  
E# = Emergency renumbered Section  
EEXP = Emergency expired

**RECODIFICATION OF RULES**

RC = Recodified

**REJECTION OF RULES**

RJ = Rejected by the Attorney General

**TERMINATION OF RULES**

TN = Terminated proposed new Sections  
TM = Terminated proposed amended Section  
TR = Terminated proposed repealed Section  
T# = Terminated proposed renumbered Section

**RULE EXPIRATIONS**

EXP = Rules have expired  
*See also “emergency expired” under emergency rulemaking*

**CORRECTIONS**

C = Corrections to Published Rules

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**RULEMAKING ACTIVITY INDEX**

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

**THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 7 OF VOLUME 26.**

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R21-5-205. FM-241

**Clean Elections Commission, Citizens**

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R2-20-209. FM-111  
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R2-20-702.01. PM-102  
R2-20-703.01. PM-104

**Corporation Commission - Transportation**

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R14-5-204. PM-11

**Dispensing Opticians, Board of**

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**Economic Security, Department of - Child Support Enforcement**

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**Economic Security, Department of - Developmental Disabilities**

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**Economic Security, Department of - Food Stamps Program**

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## RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date										
1/1	3/1	2/1	4/1	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/2	2/2	4/2	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/3	2/3	4/3	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/4	2/4	4/4	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/5	2/5	4/5	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/6	2/6	4/6	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/7	2/7	4/7	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/8	2/8	4/8	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/9	2/9	4/9	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/10	2/10	4/10	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/11	2/11	4/11	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/12	2/12	4/12	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/13	2/13	4/13	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/14	2/14	4/14	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/15	2/15	4/15	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/16	2/16	4/16	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/17	2/17	4/17	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/18	2/18	4/18	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/19	2/19	4/19	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/20	2/20	4/20	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/21	2/21	4/21	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/22	2/22	4/22	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/23	2/23	4/23	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/24	2/24	4/24	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/25	2/25	4/25	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/26	2/26	4/26	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/27	2/27	4/27	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/28	2/28	4/28	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/29	2/29	4/29	3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/30			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	3/31			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date										
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30/21
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1/21	12/2	1/31/21
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2/21	12/3	2/1/21
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3/21	12/4	2/2/21
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4/21	12/5	2/3/21
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5/21	12/6	2/4/21
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6/21	12/7	2/5/21
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7/21	12/8	2/6/21
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8/21	12/9	2/7/21
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9/21	12/10	2/8/21
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10/21	12/11	2/9/21
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11/21	12/12	2/10/21
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12/21	12/13	2/11/21
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13/21	12/14	2/12/21
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14/21	12/15	2/13/21
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15/21	12/16	2/14/21
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16/21	12/17	2/15/21
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17/21	12/18	2/16/21
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18/21	12/19	2/17/21
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19/21	12/20	2/18/21
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20/21	12/21	2/19/21
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21/21	12/22	2/20/21
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22/21	12/23	2/21/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23/21	12/24	2/22/21
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24/21	12/25	2/23/21
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25/21	12/26	2/24/21
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26/21	12/27	2/25/21
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27/21	12/28	2/26/21
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28/21	12/29	2/27/21
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29/21	12/30	2/28/21
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1/21



**REGISTER PUBLISHING DEADLINES**

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

<b>Deadline Date (paper only) Friday, 5:00 p.m.</b>	<b>Register Publication Date</b>	<b>Oral Proceeding may be scheduled on or after</b>
November 15, 2019	December 6, 2019	January 6, 2020
November 22, 2019	December 13, 2019	January 13, 2020
November 29, 2019	December 20, 2019	January 21, 2020
December 6, 2019	December 27, 2019	January 27, 2020
December 13, 2019	January 3, 2020	February 3, 2020
December 20, 2019	January 10, 2020	February 10, 2020
December 27, 2019	January 17, 2020	February 17, 2020
January 3, 2020	January 24, 2020	February 24, 2020
January 10, 2020	January 31, 2020	March 2, 2020
January 17, 2020	February 7, 2020	March 9, 2020
January 24, 2020	February 14, 2020	March 16, 2020
January 31, 2020	February 21, 2020	March 23, 2020
February 7, 2020	February 28, 2020	March 30, 2020
February 14, 2020	March 6, 2020	April 6, 2020
February 21, 2020	March 13, 2020	April 13, 2020
February 28, 2020	March 20, 2020	April 20, 2020
March 6, 2020	March 27, 2020	April 27, 2020
March 13, 2020	April 3, 2020	May 4, 2020
March 20, 2020	April 10, 2020	May 11, 2020
March 27, 2020	April 17, 2020	May 18, 2020
April 3, 2020	April 24, 2020	May 26, 2020



### GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor's Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council's office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

#### GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2019/2020 (MEETING DATES ARE SUBJECT TO CHANGE)

[M19-118]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> November 19, 2019	<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 7, 2020	<i>Tuesday</i> January 14, 2020
<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> January 28, 2020	<i>Tuesday</i> February 4, 2020
<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> February 25, 2020	<i>Tuesday</i> March 3, 2020
<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> March 31, 2020	<i>Tuesday</i> April 7, 2020
<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> April 28, 2020	<i>Tuesday</i> May 5, 2020
<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> May 19, 2020	<i>Wednesday</i> May 27, 2020	<i>Tuesday</i> June 2, 2020
<i>Tuesday</i> May 19, 2020	<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> June 30, 2020	<i>Tuesday</i> July 7, 2020
<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> July 28, 2020	<i>Tuesday</i> August 4, 2020
<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> August 25, 2020	<i>Tuesday</i> September 1, 2020
<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> September 29, 2020	<i>Tuesday</i> October 6, 2020
<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> October 27, 2020	<i>Tuesday</i> November 3, 2020
<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> November 24, 2020	<i>Tuesday</i> December 1, 2020
<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> December 22, 2020	<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 5, 2021
<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 19, 2021	<i>Tuesday</i> January 26, 2021	<i>Tuesday</i> February 2, 2021

\* Materials must be submitted by 5 PM on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
**Amy B. Chan**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcanelections.gov

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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 1.23.20**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-702**

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1. An identification of the proposed rule making.

R2-20-702. Amended.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

Candidates for state and legislative office are directly affected.

Political Parties are directly affected.

Organizations that have tax status under Section 501(a) of the internal revenue code and are authorized to make candidate related expenditures are directly affected.

3. A cost benefit analysis of the following:

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

Agency probable costs: The agency did and does not anticipate any additional FTE's, nor additional costs, as the agency already audits all candidates who chose to participate in the Clean Funding program, likewise the agency maintains the capability to accept and resolve complaints against candidates. Depending upon usage of the program, the agency may or may not see a decline in usage, but that is difficult to estimate. The agency does anticipate some increase in compliance related work but that is subsumed in the Council's prior return decision.

Agency probable benefits: The agency did and does not benefit from the rule change.

No other agency is directly affected.

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

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

To the extent that political parties and a particular subgroup of tax exempt organizations are considered businesses, they may see less revenue under the rule as amended. However, parties are all ready prohibited by rule from profiting from the provision of good and services. Likewise, under the prior rule, payments to groups, including those with tax status under Section 501(a) of the Internal Revenue Code had to be reasonable in relation to the value of the expenditure. The probable costs, however, do include compliance costs for candidates, parties, and subject 501(a), and other organizations because the amended rule remove those matters that the Commission had determined, were acceptable uses and unaffected by Proposition 306. Now such determinations will be made on a case by case basis, although this cost is subsumed in the Council's prior return determination.

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

The agency did and does not anticipate any impact on private or public employment in any of those three categories.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

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

To the best of the agency's knowledge no small businesses are subject to its amended rule.

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

If there was a small business impact, it would be an increase in compliance costs in order to ensure that the small business complies with A.R.S.§ 16-948. However, those costs would be dependent upon being involved, voluntarily, with providing goods and services to clean funding participating candidates. Additionally, there is a probably administrative cost for candidates and other entities formerly operating under the Commission's determination of what acceptable expenditures existed that were not affected by Proposition 306. This cost, however, is subsumed in the Council's prior return decision.

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

The agency would have been and would be in the future open to any of the methods prescribed in section 41-1035. However, A.R.S. 16-948 would seem to preclude such measures.

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

The probable cost on private persons is that if they choose to run as participating candidates under the Clean Funding program administrated by the Commission, they will have a limitation on whom they can spend money with, in line with A.R.S § 16-948. To the extent that voters are consumers, they will potentially have fewer candidates participating in the clean funding program, which breaks the link between dollars and political favors that gives rise to quid pro quo corruption and its appearance. The benefit to consumers is that Clean Funding cannot be spent with parties and certain groups with status under Section 501(a) of the Internal Revenue Code. Additionally, there is a probably cost for candidates and other entities formerly operating under the Commission's determination of what acceptable expenditures existed that were not affected by Proposition 306. This cost, however, is subsumed in the Council's prior return decision.

6. A statement of the probable effect on state revenues.

This rule does not have any impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The returned amendment, in the Commission's view, proposed the least intrusive, least burdensome and least costly way of achieving the statute and rules goals. Proposition 306 was specifically targeted at spending by participating candidates with political parties and certain organizations that have tax exempt status under the Internal Revenue Code. In order to maintain the least intrusive, least costly, and least burdensome manner of approaching the rule, the commission left those parts of the rule that were unaffected by Proposition 306 in place. Indeed, the commission has always had rules in Chapter detailing both what is authorized and what is unauthorized as examples, Arizona Administrative Code Section R2-20-703 includes several examples of unauthorized spending. The organizations identified in the Rule are not by their terms subject to the IRC tax exemption law, a voluntary designation that certain kinds of particularized organizations, trade groups and social welfare organizations, for example, may seek. (Indeed, Proposition 306 specifically excluded those tax exempt entities, such as 501(C)(3)s, which are not authorized by the IRS to make candidate expenditures.). Thus, the final rule excises with precision the language that must be excised pursuant to Proposition 306. Nevertheless, the Council's return reached a different conclusion and this amendment proposes, as far as is known, the least intrusive, least burdensome and least costly manner of complying with the Council's view.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection,

shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule to be consistent with A.R.S. § 16-948, amended by Proposition 306 (2018). The amendment removes language targeted by that measure. It also removes language the Council objected to under its apparent view of Proposition 306.

## 16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

**D-5**

**BOARD OF PSYCHOLOGIST EXAMINERS (R20-0503)**

Title 4, Chapter 26, Article 2, Licensure

**Amend:** R4-26-203, R4-26-203.01, R4-26-205, R4-26-207, Table 1



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS (R20-0503)**  
Title 4, Chapter 26, Article 2, Licensure

**Amend:** R4-26-203, R4-26-203.01, R4-26-205, R4-26-207, Table 1

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### **Summary:**

This regular rulemaking from the Board of Psychologist Examiners (Board) seeks to amend rules in Title 4, Chapter 26, Article 2 related to licensure. This rulemaking is being conducted to implement a course of action that was proposed in the Board's 5YRR which was approved by the Council at the August 6, 2019 Council Meeting. In addition to making amendments to improve the clarity, conciseness, and understandability of the rules, this rulemaking seeks to remove continuing education requirements found in R4-26-207(B)(2). This rule requires at least four hours of continuing education related to issues of domestic violence, intimate partner abuse, or abuse of vulnerable adults. However, the Board indicates that this requirement is burdensome for licensees who do not deal with these issues. The Board indicates that, while A.R.S. § 25-406(C) requires a court to appoint individuals with training in these subjects, there is no obligation for the Board to ensure all licensees are qualified for court appointment.

Additionally, this rulemaking seeks to increase the time frame for an applicant to respond to a notice indicating the application is incomplete because an examination score is missing in Table 1 from 240 days to 365 days. Pursuant to R4-26-204(A)(3), the Board will administratively close a file of an applicant who fails to take the examination within one year

from the date of the Board's authorization. Because the applicant has one year in which to take the examination, the Board proposes to extend the time frame outlined in Table 1 to make it consistent with the rest of the Board's rules.

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?**

The Board indicates that 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 expects the rulemaking to have little economic impact - and most of the economic impact will be on the Board. There are currently 1,928 licensed psychologists in Arizona. The number of licensed psychologists has grown 10 percent during the last five years. During the last calendar year, 1,016 licensees renewed their license. Many of these renewing licensees would have benefitted from not having to take a continuing education course irrelevant to their practices. The Board, which is assisted by four FTEs, has a current appropriation of \$516,100. The four FTEs also do work regarding licensure and regulation of behavior analysts. The Board incurred the cost of completing this rulemaking. It will have the benefit of rules that impose fewer burdens on licensees and applicants while allowing the Board to fulfill its statutory responsibilities.

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

The Board has determined the rulemaking will result in minimal or no costs to those who are impacted by the regulations. As stated previously, many of these renewing licensees would have benefitted from not having to take a continuing education course irrelevant to their practices. The Board has also determined that the benefits of the rulemaking outweigh the costs and that the rules impose the least burden and cost to those who are regulated.

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

Stakeholders include: The Board, Licensees, Applicants, Psychologists, and the general public.

The Board will be directly affected by, bear the minimal costs of, and directly benefit from the rulemaking. Psychologists are the only businesses directly affected by the rulemaking, and they will incur no costs, only benefits. No political subdivision is directly affected by the rulemaking. The rulemaking will have no impact on private or public employment.

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

The Board indicates there were no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Board indicates that it did not receive any comments related to this rule package. The Board indicates it held a public hearing on March 17, 2020 in order to give the public an opportunity to comment on the rules, but no comments were received.

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

These rules require the issuance of licenses. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a license, the agency shall use a general permit. However, an agency may use an alternative type of license if specifically authorized by state statute. See A.R.S. § 41-1037(A)(2).

The Board indicates that the licenses issued are individualized licenses rather than general permits, but are specifically authorized by A.R.S. § 32-2063(A)(3) and A.R.S. § 32-2071. Therefore, the Board is in compliance with A.R.S. § 41-1037.

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

The Board indicates there is no corresponding federal law applicable to the subject matter of this rulemaking.

11. **Conclusion**

This rulemaking seeks to implement the course of action proposed in the Board's 5YRR approved on August 6, 2019 by amending several rules to improve their clarity, conciseness, and understandability, as well as removing or relieving some burdens on licensees. The Board is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



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DOUGLAS A. DUCEY  
Governor

HEIDI HERBST PAAKKONEN  
Executive Director

March 17, 2020

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

**Re: A.A.C.      Title 4. Professions and Occupations  
                         Chapter 16. Board of Psychologist Examiners**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on March 17, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on August 6, 2019.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
  - 1. Cover letter signed by the Executive Director;
  - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
  - 3. Economic, Small Business, and Consumer Impact Statement

Regards,

Heidi Herbst Paakkonen, MPA  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

**PREAMBLE**

- | <b><u>1. Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
|---|---------------------------------|
| R4-26-203   | Amend                           |
| R4-26-203.01  | Amend                           |
| R4-26-205   | Amend                           |
| R4-26-207   | Amend                           |
| Table 1   | Amend                           |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 32-2063(A)(9)  
Implementing statute: A.R.S. § 32-2063(A)(2) and (A)(3)
- 3. The effective date for the rules:**  
As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 26 A.A.R. 205, January 31, 2020  
Notice of Proposed Rulemaking: 26 A.A.R. 187, January 31, 2020
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Heidi Herbst Paakkonen  
Address: Board of Psychologist Examiners

1740 W Adams Street, Suite 3403  
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

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

In a 5YRR approved by the Council on August 6, 2019, the Board indicated it would improve the clarity and usefulness of the rules by making the amendments in this rulemaking. The Board deleted R4-26-207(B)(2) after determining the requirement was burdensome for licensees who do not deal with the issues of domestic violence, intimate partner abuse, or abuse of vulnerable adults. A.R.S. § 25-406(C) requires a court to appoint individuals with training in these subjects. However, there is no obligation for the Board to ensure all licensees are qualified for court appointment. In Table 1, the time frame for an applicant to respond to a notice indicating the application is incomplete because an examination score is missing is increased because the applicant has one year in which to take the national examination. An exemption from Executive Order 2019-01 was provided for this rulemaking by Emily Rajakovich, of the Governor's Office, in an e-mail dated January 10, 2020.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board expects the rulemaking to have minimal economic impact because none of the amendments is substantive. They only make the rules clearer and more useful. Deleting R4-26-207(B)(2) removed a burdensome requirement.

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

No changes were made between the proposed and final rules.

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

The Board received no written comments regarding the rulemaking. No one commented at the oral proceeding on March 17, 2020.

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. § 32-2071) and rule.

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

Federal law does not apply to the specific subject matter of this rulemaking.

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

No analysis was submitted.

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

None

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

None of the rules in this rulemaking was previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**  
**ARTICLE 2. LICENSURE**

Section

R4-26-203. Application for Initial License

R4-26-203.01. Application for Licensure by Credential

R4-26-205. Renewal of License

R4-26-207. Continuing Education

Table 1. Time Frames (in days) for Processing Applications

## ARTICLE 2. LICENSURE

### R4-26-203. Application for Initial License

A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form approved by the Board, which is available from the Board office and on its website web site, with an attestation that is signed and dated by the applicant, ~~and provide the following:~~

1. ~~Personal information about the applicant:~~
  - a. Full name;
  - b. Other names by which the applicant is or ever has been known;
  - c. Residential address and telephone number;
  - d. Business name and address;
  - e. Work telephone and fax numbers;
  - f. E-mail address;
  - g. Gender;
  - h. Date of birth;
  - i. Place of birth; and
  - j. Social Security number;
2. ~~An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;~~
3. ~~An indication whether the applicant is active military;~~
4. ~~A statement of whether the applicant:~~
  - a. Holds a Certificate of Professional Qualification in Psychology, a National Register of Health Service Providers in Psychology credential, or is a diplomate or specialist of the American Board of Professional Psychology;
  - b. Is or ever has been licensed as a psychologist in another regulatory jurisdiction and if so, the name of the regulatory jurisdiction and license number;
  - c. Has applied for and been rejected or denied licensure as a psychologist in a regulatory jurisdiction and if so, the name of each regulatory jurisdiction, date of each application, and reason given for the rejection or denial;
  - d. Is or ever has been licensed or certified in a profession or occupation other than psychology and if so, the names of the professions or occupations, regulatory jurisdictions, and license numbers;
  - e. Has ever taken the national examination and if so, the name of each regulatory jurisdiction in which the examination was taken and each date of examination;

- ~~f. Has ever had an application for a professional license, certification, or registration other than psychology denied or rejected by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, type of license, certification, or registration denied or rejected, and date of denial or rejection;~~
- ~~g. Has ever withdrawn an application for a professional license, certification, or registration in lieu of administrative proceedings and if so, the reason for the withdrawal;~~
- ~~h. Has ever had disciplinary action initiated against the applicant's professional license, certification, or registration, or had a professional license, certification, or registration suspended or revoked by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, date of the disciplinary action, and license number;~~
- ~~i. Has ever entered into a consent agreement or stipulation arising from a complaint against any professional license, certification, or registration and if so, the name of the regulatory jurisdiction, date, and license number;~~
- ~~j. Is a member of any professional association in the field of psychology and if so, name of the association;~~
- ~~k. Has ever had membership in a professional association in the field of psychology denied or revoked and if so, the name of the professional association and date of denial or revocation;~~
- ~~l. Is currently under investigation for or has been found guilty of violating a code of professional ethics of any professional organization and if so, the name of the professional organization and date of investigation;~~
- ~~m. Is currently under investigation for or has been found to have violated a professional code of conduct by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of investigation;~~
- ~~n. Has ever been sanctioned or placed on probation by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of action;~~
- ~~o. Is currently awaiting trial, has been convicted of, or pled no contest or guilty to any felony or a misdemeanor other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any convictions that have been expunged, deleted, or set aside and if so, the name of the jurisdiction, offense involved, date of offense, status of resolution, expected resolution date, and a narrative explanation;~~
- ~~p. Has been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a certificate or license in another profession, or the~~

- ~~applicant's work as a member of a profession in which the applicant was not certified or licensed and if so, the name of the jurisdiction, allegation involved, and date;~~
- ~~q. Has ever been involuntarily terminated or resigned instead of termination from any psychological or behavioral health position or related employment and if so, the name of the employer involved and date;~~
  - ~~r. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently; and~~
  - ~~s. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently;~~
5. Information about the applicant's education and training:
- ~~a. Name and address of each university or college from which the applicant graduated, dates attended, date of graduation, degree received, name of department, and major subject area of study;~~
  - ~~b. Name and department of the applicant's major advisor;~~
  - ~~c. Title of the applicant's dissertation or Psy.D. project for the doctoral degree;~~
  - ~~d. Official title of the applicant's doctoral degree program or predoctoral specialty area;~~
  - ~~e. Whether the doctoral degree program that the applicant attended was accredited by the American Psychological Association at the time of graduation;~~
  - ~~f. Whether the applicant's internship training program was an American Psychological Association accredited program or a member of the Association of Psychology and Postdoctoral Internship Centers;~~
  - ~~g. Location of each internship training program in which the applicant participated and each supervisor's name and contact information; and~~
  - ~~h. Documentation demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;~~
6. Areas of professional competence;
7. Intended area of professional practice in psychology;
8. Name, position, and address of at least two individuals to serve as references who:
- ~~a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist-Examiners;~~
  - ~~b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities~~

- ~~in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and~~
- e. Recommend the applicant for licensure;
9. ~~History of employment for the past 10 years in the field of psychology including, for each position held, the:~~
- a. ~~Beginning and ending dates of employment,~~
  - b. ~~Number of hours worked per week,~~
  - c. ~~Name and address of employer,~~
  - d. ~~Name and address of supervisor, and~~
  - e. ~~Type of employment; and~~
10. ~~Information demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;~~
11. ~~An attestation by the applicant, that the information on the application is about the applicant, is true and correct, and is not being submitted fraudulently;~~
- B.** Additionally, an applicant shall submit:
- 1. No change
  - 2. The results of a self-query from the National Practitioner Data Bank ~~Healthcare Integrity and Protection Data Bank;~~
  - 3. No change
  - 4. No change
  - 5. Name, position, and address of at least two individuals to serve as references who:
    - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
    - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
    - c. Recommend the applicant for licensure;
  - 5.6. The fee required under R4-26-108; and
  - 6.7. Any other information authorized by statute.

- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change

**R4-26-203.01. Application for Licensure by Credential**

- A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01 (D) shall submit an application packet to the Board that includes:
  - 1. An application form approved by the Board, which is available from the Board office and on its website web site, ~~signed and dated by the applicant, that contains the information required by R4-26-203(A)(1) through (4), (A)(5)(a) through (f), (A)(6), (A)(7), (A)(10), and R4-26-203 (B)(2) through (6)~~ with an attestation that is signed and dated by the applicant;
  - 2. Verification sent directly to the Board by the credentialing agency that the applicant:
    - a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
    - b. Holds a current National Register of Health Service Providers in Psychology (NRHSPP) credential and has practiced psychology independently at the doctoral level for at least five years; or
    - c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
  - 3. Verification of all other psychology licenses or certificates ever held in any jurisdiction.
- B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant ~~obtain~~ obtained a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
- C. If the Board determines ~~that~~ an application for licensure by credential requires clarification, the Board may require ~~that~~ an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information ~~that is~~ deemed necessary by the Board.

**R4-26-205. Renewal of License**

- A. No change
- B. No change
- C. To renew a license, a licensee shall submit to the Board a renewal application form approved by the Board, which is available from the Board office and on its website web site, ~~signed and dated by the licensee, and provide the following:~~ with an attestation that is signed and dated by the licensee.
  - 1. ~~Personal information about the applicant:~~
    - a. ~~Full name;~~
    - b. ~~Other names by which the applicant is or ever has been known;~~
    - c. ~~License number;~~
    - d. ~~Home address and telephone number;~~
    - e. ~~Business name and address;~~
    - f. ~~Work telephone and fax numbers;~~
    - g. ~~E-mail address;~~
    - h. ~~Gender;~~
    - i. ~~Date of birth;~~
    - j. ~~Place of birth; and~~
    - k. ~~Social Security number;~~
  - 2. ~~An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;~~
  - 3. ~~An indication whether the applicant is active military;~~
  - 4. ~~A statement of whether the applicant:~~
    - a. ~~Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access to client or patient records and if not, explain;~~
    - b. ~~Is currently licensed or certified as a psychologist in a regulatory jurisdiction other than Arizona and if so, the name of the regulatory jurisdiction and license number;~~
    - c. ~~Is a licensed or certified member of another profession and if so, the name of the profession, regulatory jurisdiction, and license number;~~
    - d. ~~Is a member of a hospital staff or provider panel and if so, the name of the hospital or panel;~~
    - e. ~~Has completed the required 40 hours of continuing education and if not, an explanation of why the required hours have not been completed;~~

- ~~f. Has, during the last license period, been denied a license or certificate to practice any profession by any regulatory jurisdiction and if so, the name of the profession and regulatory jurisdiction and the reason for denial or a copy of the notice of denial;~~
- ~~g. Has, during the last license period, relinquished responsibilities, resigned a position, or been terminated while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;~~
- ~~h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, the military, or provider panel or surrendered a license while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;~~
- ~~i. Has, during the last license period, been disciplined by an agency in any regulatory jurisdiction including the Arizona Board of Psychologist Examiners, the military, or a health-care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a psychologist or as a professional in any other field and if so, the name and address of the agency, nature and date of the disciplinary action, and statement of the charges and findings;~~
- ~~j. Is currently awaiting trial, has, during the last license period, been convicted of or pled no contest or guilty to any felony or a misdemeanor, other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any conviction that was expunged, deleted, or set aside in any state or country and if so, the convicting jurisdiction, offense, date of offense, status of resolution, expected resolution, a narrative explanation, and copies of relevant documents;~~
- ~~k. Is currently under investigation by any professional organization, the military, health care institution, or provider panel of which the applicant is a member or on staff, or regulatory agency concerning the ethical propriety or legality of the applicant's conduct and if so, name of the entity involved and conduct at issue;~~
- ~~l. Has, during the last license period, been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a license or certificate in another profession, or the applicant's work as a member of a profession in which the applicant was not licensed or certified and if so, the name of the jurisdiction, allegation involved, date, and copies of relevant documents;~~
- ~~m. Is delinquent in payment of a judgment for child support and if so, the court that issued and date of the support order;~~
- ~~n. Has, during the last license period, had an application for membership in any professional organization rejected, or has had any professional organization suspend or revoke the~~

- ~~applicant's membership, place the applicant on probation, or otherwise censure the applicant for unethical or unprofessional conduct or other violation of eligibility or membership requirements and if so, name of the professional organization and date of the action;~~
- ~~o. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently;~~
  - ~~p. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently; and~~
  - ~~q. Is submitting the renewal application timely and if not, whether the applicant has practiced psychology in Arizona since the license expired and if so, a complete explanation;~~
5. The license status for which application is made;
- a. Active;
  - b. Inactive due to mental or physical disability;
  - e. Voluntary inactive;
  - d. Medical or inactive continuation; or
  - e. Retired. If retired status is requested, the applicant shall designate whether retired status is to be achieved by allowing the license to expire or requesting voluntary inactive status;
6. The following information about the continuing education completed during the previous license period:
- a. Title of the continuing education;
  - b. Date completed;
  - e. Sponsoring organization, publication, or educational institution;
  - d. Number of hours in the continuing education; and
  - e. Brief description of the continuing education;
7. A signed attestation of the veracity of the information provided; and
8. ~~Any other information authorized by statute.~~
- D.** Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
  2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
  3. The Board's Mandatory Confidential Information form. The following information about the continuing education completed during the previous license period:
    - a. Title of the continuing education;
    - b. Date completed;

- c. Sponsoring organization, publication, or educational institution;
  - d. Number of hours in the continuing education; and
  - e. Brief description of the continuing education; and
4. Any other information authorized by statute.
- E. If a completed application, ~~including the information about continuing education completed,~~ is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F. No change
- G. A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C), ~~including the information about continuing education completed,~~ and the documents required under subsections (D)(2) and (3); and
  2. The license renewal and reinstatement fees required under R4-26-108.
- H. No change
1. No change
  2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108(A)(7).
- I. No change
- J. No change

**R4-26-207. Continuing Education**

- A. No change
- B. A licensee shall ensure the continuing education hours obtained include at least four hours in ~~each of the following:~~
1. ~~Professional~~ professional ethics; ~~and~~
  2. ~~Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults. The topic of bullying satisfies the requirement for child abuse.~~
- C. During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, ~~domestic violence, intimate partner abuse, abuse of vulnerable adults, child abuse, and bullying~~ that the new licensee must complete during the initial license period. To calculate the number of

continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in ethics.

- ~~1. Ethics, as specified under subsection (B)(1); and~~
- ~~2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under subsection (B)(2).~~

**D.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change

**E.** No change

1. No change
2. No change
3. No change

**F.** No change

1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061(9), for at least 75 percent of the program hours; and
2. No change

**G.** No change

1. No change
2. No change
3. No change

- 4. No change
- 5. No change
- H.** No change
- I.** No change
- J.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- K.** No change
- L.** No change

**Table 1. Time Frames (in days) for Processing Applications**

<b>Type of Application or Request</b>	<b>Statutory or Rule Authority</b>	<b>Administrative Completeness Time Frame</b>	<b>Time to Respond to Notice of Deficiency</b>	<b>Substantive Review Time Frame</b>	<b>Time to Respond to Request for Additional Information</b>	<b>Overall Time Frame</b>
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	<del>240</del> <u>365</u>	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and A.A.C. R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required	A.R.S. §§ 32-2072(C) and A.A.C. R4-26-203.02	30	240	90	240	120

for Licensure						
Reapplication for Licensure	A.R.S. §§ 32-2067 and A.A.C. R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; A.A.C. R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; A.A.C. R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074 A.A.C. R4-26-207	60	N/A	90	N/A	150

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

1. Identification of the rulemaking:

In this rulemaking, the Board:

- Removed from rule detail regarding license applications to reduce the possibility of confusion caused by having the rule inconsistent with the license application;
- Deleted R4-26-207(B)(2) after determining the requirement was burdensome for licensees who do not deal with the issues of domestic violence, intimate partner abuse, or abuse of vulnerable adults. A.R.S. § 25-406(C) requires a court to appoint individuals with training in these subjects. However, there is no obligation for the Board to ensure all licensees are qualified for court appointment; and
- Increased the time frame for an applicant to respond to a notice indicating the application is incomplete because an examination score is missing because the applicant has one year in which to take the national examination
  - a. The conduct and its frequency of occurrence that the rule is designed to change:  
Until the rulemaking is completed, a burdensome and unnecessary continuing education requirement and potential sources of confusion will remain in rule.
  - b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:  
It is not good government to have a burdensome and unnecessary requirement or potential sources of confusion in rule.
  - c. The estimated change in frequency of the targeted conduct expected from the rule change:  
When the rulemaking is completed, a burdensome and unnecessary requirement and potential sources of confusion will be removed from rule.

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

The Board expects the rulemaking to have little economic impact and most of the economic impact will be on the Board. There are currently 1,928 licensed psychologists in Arizona. The

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

number of licensed psychologists has grown 10 percent during the last five years. During the last calendar year, 1,016 licensees renewed their license. Many of these renewing licensees would have benefitted from not having to take a continuing education course irrelevant to their practices. During the last year there were 31 applicants by credential. All applicants would have benefitted from removal of the potential sources of confusion in the current rules. The Board, which is assisted by four FTEs, has a current appropriation of \$516,100. The four FTEs also do work regarding licensure and regulation of behavior analysts.

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: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners  
1740 W Adams Street, Suite 3403  
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

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

Licensees and applicants will be directly affected by and directly benefit from the rulemaking. The rulemaking imposes no costs on licensees and applicants. The Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

Applicants will have the benefit of avoiding sources of potential confusion in the current rules. Licensees who renew their licenses will have the benefit of not being required to take a continuing education course irrelevant to their practice. These positive benefits are achieved without imposing costs of applicants or licensees.

The Board incurred the cost of completing this rulemaking. It will have the benefit of rules that impose fewer burdens on licensees and applicants while allowing the Board to fulfill its statutory responsibilities.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:  
The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not require a new FTE to implement and enforce the rulemaking.
  - b. Costs and benefits to political subdivisions directly affected by the rulemaking:  
No political subdivision is directly affected by the rulemaking.
  - c. Costs and benefits to businesses directly affected by the rulemaking:  
Psychologists are the only businesses directly affected by the rulemaking. They will incur no costs. Their benefits are described in item 4.
6. Impact on private and public employment:  
The rulemaking will have no impact on private or public employment.
  7. Impact on small businesses<sup>2</sup>:
    - a. Identification of the small business subject to the rulemaking:  
Psychologists are small businesses subject to the rulemaking.
    - b. Administrative and other costs required for compliance with the rulemaking:  
There are no costs required for compliance with the rulemaking.
    - c. Description of methods that may be used to reduce the impact on small businesses:  
Because the rulemaking imposes no costs and reduces a burdensome requirement and potential sources of confusion, there is no need to reduce the impact on small businesses.
  8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
The rulemaking does not directly affect private persons or consumers.
  9. Probable effects on state revenues:  
There will be no effect on state revenues.
  10. Less intrusive or less costly alternative methods considered:  
No less intrusive or less costly alternative methods were considered.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

## CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

**Historical Note**

Former Section R4-26-120 renumbered to R4-26-203 effective July 27, 1979 (Supp. 79-4).

**R4-26-123. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-204 effective July 27, 1979 (Supp. 79-4).

**R4-26-124. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-205 effective July 27, 1979 (Supp. 79-4).

**R4-26-125. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-206 effective July 27, 1979 (Supp. 79-4).

**R4-26-126. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-207 effective July 27, 1979 (Supp. 79-4).

**R4-26-127. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-208 effective July 27, 1979 (Supp. 79-4).

**R4-26-128. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-209 effective July 27, 1979 (Supp. 79-4).

**R4-26-129. Reserved****through****R4-26-149. Reserved****R4-26-150. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-301 effective July 27, 1979 (Supp. 79-4).

**R4-26-151. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-302 effective July 27, 1979 (Supp. 79-4).

**R4-26-152. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-303 effective July 27, 1979 (Supp. 79-4).

**R4-26-153. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-304 effective July 27, 1979 (Supp. 79-4).

**R4-26-154. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-305 effective July 27, 1979 (Supp. 79-4).

**R4-26-155. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-306 effective July 27, 1979 (Supp. 79-4).

**R4-26-156. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-307 effective July 27, 1979 (Supp. 79-4).

**R4-26-157. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

**ARTICLE 2. LICENSURE****R4-26-201. Application Deadline**

- A.** The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet, including reference forms mailed or e-mailed from the Board office, is received by the Board office at least 18 days before the date of the meeting.
- B.** The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsection (A) statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-120 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section R4-26-201 renumbered from R4-26-108 and amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-202. Doctorate**

- A.** The Board shall apply the following criteria to determine whether a doctoral program provided by an institution of higher education met the standards in A.R.S. § 32-2071(A)(2) at the time an applicant began the degree program:
1. The program is identified and labeled as a psychology program if there were institutional catalogues and brochures that specified the intent of the institution of higher education to educate and train psychologists;
  2. The program stands as a recognized, coherent organizational entity if there was an organized sequence of courses comprising a psychology curriculum; and
  3. The program has clearly identified entry and exit criteria within its psychology curriculum if there were specific prerequisites for entrance into the program and delineated requirements for graduation.
- B.** The Board shall verify that an applicant completed the hours in the subject areas described in A.R.S. § 32-2071(A)(4). For this purpose, the applicant shall have the institution of higher education that the applicant attended provide directly to the Board an official transcript of all courses taken and verification of the dissertation or similar project.
1. The Board may require additional documentation from the applicant or from the institution to determine whether the applicant satisfied the requirements of A.R.S. § 32-2071(A)(4).

## CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

2. The Board shall count five quarter hours or six trimester hours as the equivalent of three semester hours, as required under A.R.S. § 32-2071(A)(4). When an academic term is other than a semester, quarter, or trimester, 15 classroom contact hours equals one semester hour.
- C. To determine whether a comprehensive examination taken by an applicant as part of a doctoral program in psychology satisfies the requirements of A.R.S. § 32-2071(A)(4), the Board shall review documentation provided directly to the Board by the institution of higher education that granted the doctoral degree, that demonstrates how the applicant's comprehensive examination was constructed, lists criteria for passing, and provides the information used to determine that the applicant passed.
- D. The Board shall not accept as core program hours required under A.R.S. § 32-2071(A)(4) credit:
1. For workshops, practica, undergraduate courses, life experiences, continuing education courses, or experiential or correspondence courses;
  2. Transferred from institutions that are not accredited under A.R.S. § 32-2071(A)(1); or
  3. For seminars, readings courses, or independent study unless the applicant proves that the course was an in-depth study devoted to a particular core program content area by submitting one or more of the following:
    - a. Course description in the official catalogue of the institution of higher education,
    - b. Course syllabus, or
    - c. Signed statement from a dean or psychology department head affirming that the course was an in-depth study devoted to a particular core program content area.
- E. The Board shall count a course or comprehensive examination only once to satisfy a requirement of A.R.S. § 32-2071(A)(4).
- F. An honorary doctorate degree does not qualify an applicant for licensure as a psychologist.
- f. E-mail address;
  - g. Gender;
  - h. Date of birth;
  - i. Place of birth; and
  - j. Social Security number;
2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
  3. An indication whether the applicant is active military;
  4. A statement of whether the applicant:
    - a. Holds a Certificate of Professional Qualification in Psychology, a National Register of Health Service Providers in Psychology credential, or is a diplomate or specialist of the American Board of Professional Psychology;
    - b. Is or ever has been licensed as a psychologist in another regulatory jurisdiction and if so, the name of the regulatory jurisdiction and license number;
    - c. Has applied for and been rejected or denied licensure as a psychologist in a regulatory jurisdiction and if so, the name of each regulatory jurisdiction, date of each application, and reason given for the rejection or denial;
    - d. Is or ever has been licensed or certified in a profession or occupation other than psychology and if so, the names of the professions or occupations, regulatory jurisdictions, and license numbers;
    - e. Has ever taken the national examination and if so, the name of each regulatory jurisdiction in which the examination was taken and each date of examination;
    - f. Has ever had an application for a professional license, certification, or registration other than psychology denied or rejected by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, type of license, certification, or registration denied or rejected, and date of denial or rejection;
    - g. Has ever withdrawn an application for a professional license, certification, or registration in lieu of administrative proceedings and if so, the reason for the withdrawal;
    - h. Has ever had disciplinary action initiated against the applicant's professional license, certification, or registration, or had a professional license, certification, or registration suspended or revoked by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, date of the disciplinary action, and license number;
    - i. Has ever entered into a consent agreement or stipulation arising from a complaint against any professional license, certification, or registration and if so, the name of the regulatory jurisdiction, date, and license number;
    - j. Is a member of any professional association in the field of psychology and if so, name of the association;
    - k. Has ever had membership in a professional association in the field of psychology denied or revoked and if so, the name of the professional association and date of denial or revocation;
    - l. Is currently under investigation for or has been found guilty of violating a code of professional ethics of any professional organization and if so, the name of the professional organization and date of investigation;

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-121 and amended effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203. Application for Initial License**

- A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant, and provide the following:
1. Personal information about the applicant:
    - a. Full name;
    - b. Other names by which the applicant is or ever has been known;
    - c. Residential address and telephone number;
    - d. Business name and address;
    - e. Work telephone and fax numbers;

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- m. Is currently under investigation for or has been found to have violated a professional code of conduct by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of investigation;
  - n. Has ever been sanctioned or placed on probation by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of action;
  - o. Is currently awaiting trial, has been convicted of, or pled no contest or guilty to any felony or a misdemeanor other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any convictions that have been expunged, deleted, or set aside and if so, the name of the jurisdiction, offense involved, date of offense, status of resolution, expected resolution date, and a narrative explanation;
  - p. Has been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a certificate or license in another profession, or the applicant's work as a member of a profession in which the applicant was not certified or licensed and if so, the name of the jurisdiction, allegation involved, and date;
  - q. Has ever been involuntarily terminated or resigned instead of termination from any psychological or behavioral health position or related employment and if so, the name of the employer involved and date;
  - r. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently; and
  - s. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently;
5. Information about the applicant's education and training:
- a. Name and address of each university or college from which the applicant graduated, dates attended, date of graduation, degree received, name of department, and major subject area of study;
  - b. Name and department of the applicant's major advisor;
  - c. Title of the applicant's dissertation or Psy.D. project for the doctoral degree;
  - d. Official title of the applicant's doctoral degree program or predoctoral specialty area;
  - e. Whether the doctoral degree program that the applicant attended was accredited by the American Psychological Association at the time of graduation;
  - f. Whether the applicant's internship training program was an American Psychological Association-accredited program or a member of the Association of Psychology and Postdoctoral Internship Centers;
  - g. Location of each internship training program in which the applicant participated and each supervisor's name and contact information; and
  - h. Documentation demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
6. Areas of professional competence;
7. Intended area of professional practice in psychology;
8. Name, position, and address of at least two individuals to serve as references who:
- a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
  - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
  - c. Recommend the applicant for licensure;
9. History of employment for the past 10 years in the field of psychology including, for each position held, the:
- a. Beginning and ending dates of employment,
  - b. Number of hours worked per week,
  - c. Name and address of employer,
  - d. Name and address of supervisor, and
  - e. Type of employment; and
10. Information demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
11. An attestation by the applicant, that the information on the application is about the applicant, is true and correct, and is not being submitted fraudulently;
- B. Additionally, an applicant shall submit:**
- 1. An original, un-retouched, passport-quality photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
  - 2. The results of a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank;
  - 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
  - 4. The Board's Mandatory Confidential Information form;
  - 5. The fee required under R4-26-108; and
  - 6. Any other information authorized by statute.
- C. In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:**
- 1. An official transcript from each university or college from which the applicant attended a graduate program or received a graduate degree that contains the date the degree was conferred;
  - 2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071 (K);
  - 3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).
  - 4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071 (F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledge-

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able psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;

5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071 (G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective April 25, 1980 (Supp. 80-2). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-122 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-203 repealed, new Section R4-26-203 renumbered from R4-26-204 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.01. Application for Licensure by Credential**

- A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01 (D) shall submit an application packet to the Board that includes:
  1. An application form, which is available from the Board office and on its website, signed and dated by the applicant, that contains the information required by R4-26-203(A)(1) through (4), (A)(5)(a) through (f), (A)(6), (A)(7), (A)(10), and R4-26-203 (B)(2) through (6);
  2. Verification sent directly to the Board by the credentialing agency that the applicant:
    - a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
    - b. Holds a current National Register of Health Service Providers in Psychology (NRHSP) credential and

- has practiced psychology independently at the doctoral level for at least five years; or
  - c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
3. Verification of all other psychology licenses or certificates ever held in any jurisdiction.
- B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtain a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
  - C. If the Board determines that an application for licensure by credential requires clarification, the Board may require that an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information that is deemed necessary by the Board.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure**

- A. As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.
- B. To apply for approval under subsection (A), an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C).
- C. When the Board approves an individual who makes application under subsections (A) and (B), the Board shall administratively close the applicant's application packet.
- D. An individual who is granted approval under subsection (C) to take the national examination may apply for an initial license under R4-26-203 after completing the supervised professional experience requirements specified in A.R.S. § 32-2071(D) as follows:
  1. Within 36 months after the application was administratively closed under subsection (C), request that the Board re-open the application packet; and
  2. Submit the portions of the application packet required under R4-26-203 that were not submitted under subsection (B).

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.03. Reapplication for License; Applying Anew**

- A. The following may reapply for a license:
  1. An individual who failed the national examination required under A.R.S. § 32-2072 and R4-26-204 no more than three times, and
  2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the

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Board under R4-26-208(H) less than one year before reapplication.

- B.** An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on applicable forms and documents previously submitted.
- C.** An individual eligible under subsection (B) to reapply for licensure shall:
1. Submit a reapplication form, which is available from the Board office, to the Board;
  2. If previously submitted references were submitted more than 12 months before the date of reapplication, provide the names, positions, and addresses of at least two individuals to serve as references who:
    - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
    - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of reapplication. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
    - c. Recommend the applicant for licensure;
  3. List all professional employment since the date of the most recent application or reapplication including:
    - a. Beginning and ending dates of employment,
    - b. Number of hours worked per week,
    - c. Name and address of employer,
    - d. Position title,
    - e. Nature of work, and
    - f. Nature of supervision;
  4. Submit the results of a self-query from the National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank; and
  5. Pay the fee required under R4-26-108(A)(2).
- D.** The following shall apply anew for a license rather than reapplying:
1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
  2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,
  3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
  4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
  5. An individual whose license expired under A.R.S. § 32-2074,
  6. An individual whose license was canceled under A.R.S. § 32-2074, and
  7. An individual who retired under A.R.S. § 32-2073(G).

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-204. Examinations****A. General rules.**

1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
  2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
  3. Examination deadline. Unless the Board grants an extension, the Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization. Upon written request to the Board's Executive Director received by the Board on or before the applicant's examination deadline, the Board shall grant the applicant one extension of up to six months to take the examination. The applicant may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months. This Section does not apply to an applicant approved to take the national examination under R4-26-203.02.
  4. The Board shall deny a license if an applicant commits any of the following acts with respect to the examination:
    - a. Violates the confidentiality of examination materials;
    - b. Removes any examination materials from the examination room;
    - c. Reproduces any portion of a licensing examination;
    - d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
    - e. Pays or uses another person to take a licensing examination for the applicant or to reconstruct any portion of the licensing examination;
    - f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
    - g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
    - h. Communicates with any other examiner during the administration of a licensing examination;
    - i. Copies answers from another examinee or permits the copying of answers by another examinee;
    - j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
    - k. Impersonates another examinee.
- B.** National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant take and pass the national examination. An applicant authorized by the Board to take the national examination passes the examination if the applicant's

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score equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant in writing of the results.

**C. Additional examination.**

1. The Board shall require an applicant to pass the national examination before allowing the applicant to take an additional examination.
2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant to determine the adequacy of the applicant's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
  - a. The Board shall review and approve the additional examination before administration.
  - b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors.
  - c. Applicants, examiners, and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-123 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-204 renumbered to R4-26-203, new Section R4-26-204 renumbered from R4-26-205 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)**

- A.** To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:
1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
  2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
  3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).
- B.** An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:
1. The application form required under R4-26-203 and provide all required information except that specified in R4-26-203(C)(3), (5), and (7); and
  2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
    - a. Goal and content of each training experience,

- b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
- c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
- d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
- e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
- f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
- g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G), and
- h. Acknowledgment that ethics training is included in the training experience.

- C.** An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.
- D.** A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.
- E.** The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:
1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
  2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2) and
  3. Submit to the Board any modification to the written training plan required under subsection (B)(2) within 10 days after the effective date of the modification.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**Appendix A. Repealed**

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Renumbered from R4-26-205, Appendix A (Supp. 95-1). Appendix A repealed by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1).

**R4-26-205. Renewal of License**

- A.** Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B.** The Board considers a license renewal application packet timely submitted if delivered or mailed to the Board's office and date stamped or postmarked on or before the last day of a licensee's birth month during the licensee's renewal year.
- C.** To renew a license, a licensee shall submit to the Board a renewal application form, which is available from the Board

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office and on its website, signed and dated by the licensee, and provide the following:

1. Personal information about the applicant:
  - a. Full name;
  - b. Other names by which the applicant is or ever has been known;
  - c. License number;
  - d. Home address and telephone number;
  - e. Business name and address;
  - f. Work telephone and fax numbers;
  - g. E-mail address;
  - h. Gender;
  - i. Date of birth;
  - j. Place of birth; and
  - k. Social Security number;
2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
3. An indication whether the applicant is active military;
4. A statement of whether the applicant:
  - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access to client or patient records and if not, explain;
  - b. Is currently licensed or certified as a psychologist in a regulatory jurisdiction other than Arizona and if so, the name of the regulatory jurisdiction and license number;
  - c. Is a licensed or certified member of another profession and if so, the name of the profession, regulatory jurisdiction, and license number;
  - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or panel;
  - e. Has completed the required 40 hours of continuing education and if not, an explanation of why the required hours have not been completed;
  - f. Has, during the last license period, been denied a license or certificate to practice any profession by any regulatory jurisdiction and if so, the name of the profession and regulatory jurisdiction and the reason for denial or a copy of the notice of denial;
  - g. Has, during the last license period, relinquished responsibilities, resigned a position, or been terminated while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
  - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, the military, or provider panel or surrendered a license while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
  - i. Has, during the last license period, been disciplined by an agency in any regulatory jurisdiction including the Arizona Board of Psychologist Examiners, the military, or a health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a psychologist or as a professional in any other field and if so, the name and address of the agency, nature and date of the disciplinary action, and statement of the charges and findings;
  - j. Is currently awaiting trial, has, during the last license period, been convicted of or pled no contest or guilty to any felony or a misdemeanor, other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any conviction that was expunged, deleted, or set aside in any state or country and if so, the convicting jurisdiction, offense, date of offense, status of resolution, expected resolution, a narrative explanation, and copies of relevant documents;
  - k. Is currently under investigation by any professional organization, the military, health care institution, or provider panel of which the applicant is a member or on staff, or regulatory agency concerning the ethical propriety or legality of the applicant's conduct and if so, name of the entity involved and conduct at issue;
  - l. Has, during the last license period, been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a license or certificate in another profession, or the applicant's work as a member of a profession in which the applicant was not licensed or certified and if so, the name of the jurisdiction, allegation involved, date, and copies of relevant documents;
  - m. Is delinquent in payment of a judgment for child support and if so, the court that issued and date of the support order;
  - n. Has, during the last license period, had an application for membership in any professional organization rejected, or has had any professional organization suspend or revoke the applicant's membership, place the applicant on probation, or otherwise censure the applicant for unethical or unprofessional conduct or other violation of eligibility or membership requirements and if so, name of the professional organization and date of the action;
  - o. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently;
  - p. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently; and
  - q. Is submitting the renewal application timely and if not, whether the applicant has practiced psychology in Arizona since the license expired and if so, a complete explanation;
5. The license status for which application is made;
  - a. Active,
  - b. Inactive due to mental or physical disability,
  - c. Voluntary inactive,
  - d. Medical or inactive continuation, or
  - e. Retired. If retired status is requested, the applicant shall designate whether retired status is to be achieved by allowing the license to expire or requesting voluntary inactive status;
6. The following information about the continuing education completed during the previous license period:
  - a. Title of the continuing education;
  - b. Date completed;
  - c. Sponsoring organization, publication, or educational institution;
  - d. Number of hours in the continuing education; and
  - e. Brief description of the continuing education;
7. A signed attestation of the veracity of the information provided; and
8. Any other information authorized by statute.

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- D.** Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
  2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
  3. The Board's Mandatory Confidential Information form.
- E.** If a completed application, including the information about continuing education completed, is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.
- G.** A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C), including the information about continuing education completed, and the documents required under subsections (D)(2) and (3); and
  2. The license renewal and reinstatement fees required under R4-26-108.
- H.** A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
  2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108(A)(7).
- I.** A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.
- J.** If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-205 renumbered to R4-26-204; new Section R4-26-205 renumbered from R4-26-206 and

amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License**

- A.** Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).
- B.** A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the Board. For every six months of inactive status, the Board shall require one hour of continuing education in:
1. Ethics, as specified under R4-26-207(B)(1); and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under R4-26-207(B)(2).
- C.** A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is canceled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-125 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-206 renumbered to R4-26-205; new Section R4-26-206 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2007, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1493, effective

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tive June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-207. Continuing Education**

- A.** A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.
- B.** A licensee shall ensure the continuing education hours obtained include at least four hours in each of the following:
1. Professional ethics; and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults. The topic of bullying satisfies the requirement for child abuse.
- C.** During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, domestic violence, intimate partner abuse, abuse of vulnerable adults, child abuse, and bullying that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in:
1. Ethics, as specified under subsection (B)(1); and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under subsection (B)(2).
- D.** If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.
1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
  2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
  3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
  4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
  5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
  6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
- 7.** The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
- a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
  - b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;
  - c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
  - d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;
  - e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the meeting, to a maximum of 10 continuing education hours; and
  - f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.
- E.** The Board shall not allow continuing education credit more than once in a license period for:
1. Teaching the same graduate-level course,
  2. Organizing and presenting a continuing education activity on the same topic or content area, or
  3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.
- F.** Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061(9), for at least 75 percent of the program hours; and

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2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.
- G.** The Board shall accept the following documents as evidence of completion of continuing education hours:
1. A certificate of attendance or completion;
  2. Statement signed by the provider verifying participation in the activity;
  3. Copy of transcript of course completed under subsection (D)(1);
  4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
  5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.
- H.** A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.
- I.** The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.
- J.** A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
  2. The Board shall not grant an extension longer than one year.
  3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).
- K.** No continuing education hours may be carried over to the next licensing period.
- L.** The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-126 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-207 repealed; new Section R4-26-207 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995. Text corrected. (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444,

effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-208. Time Frames for Processing Applications**

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the time frames listed in Table 1. An applicant or a person requesting an approval from the Board and the Board's Executive Director may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.
- B.** The administrative completeness review time frame begins when the Board receives an application packet or request for approval. During the administrative completeness review time frame, the Board shall notify the applicant or person requesting approval that the application packet or request for approval is either complete or incomplete. If the application packet or request for approval is incomplete, the Board shall specify in the notice what information is missing.
- C.** If an applicant or person requesting approval receives a notice of incompleteness under subsection (B), the applicant or person requesting approval shall submit the missing information to the Board within the time to complete listed in Table 1. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (B) until the Board receives all of the missing information.
- D.** Upon receipt of all missing information, the Board shall send a written notice of administrative completeness to the applicant or person requesting approval. The Board shall not send a separate notice of completeness if the Board grants or denies a license or approval within the administrative completeness time frame listed in Table 1.
- E.** The substantive review time frame listed in Table 1 begins on the date of the Board's notice of administrative completeness sent under subsection (D).
- F.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant or person requesting approval a comprehensive written request for additional information.
- G.** An applicant or person requesting approval who receives a request under subsection (F) shall submit the additional information to the Board within the time for response listed in Table 1. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- H.** An applicant or person requesting approval may receive a 30-day extension of the time provided under subsection (C) or (G) by providing written notice to the Board before the time expires. If an applicant or person requesting approval fails to submit to the Board the missing or additional information within the time provided under Table 1 or the time as extended, the Board shall administratively close the applicant's or person's file.
- I.** At any time before the overall time frame provided in Table 1 expires, an applicant or person requesting approval may, with approval by the Board, withdraw the application or request.
- J.** Within the overall time frame listed in Table 1, the Board shall:
1. Grant a license or approval if the Board determines that the applicant or person requesting approval meets all criteria required by statute and this Chapter; or
  2. Deny a license or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.

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- K. If the Board denies a license or approval, the Board shall send the applicant or person requesting approval a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
  2. The right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
  3. The time for appealing the denial; and
  4. The right to request an informal settlement conference.
- L. If the last day of a time frame falls on a Saturday, Sunday, or an official state holiday, the time frame ends on the next business day.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Amended effective July 3, 1984 (Supp. 84-4). Amended effective February 24, 1988 (Supp. 88-1). Renumbered from R4-26-127

effective July 3, 1991 (Supp. 91-3). Former Section R4-26-208 repealed; new Section R4-26-208 amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**Table 1. Time Frames (in days) for Processing Applications**

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	240	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and A.A.C. R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required for Licensure	A.R.S. §§ 32-2072(C) and A.A.C. R4-26-203.02	30	240	90	240	120
Reapplication for Licensure	A.R.S. §§ 32-2067 and A.A.C. R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; A.A.C. R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; A.A.C. R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074 A.A.C. R4-26-207	60	N/A	90	N/A	150

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005

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(Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-209. General Supervision**

- A. Under A.R.S. § 32-2071(D), an applicant is required to obtain 3,000 hours of supervised professional experience.
- B. A supervising psychologist shall not supervise a member of the psychologist's immediate family or the psychologist's employer or business partner.
- C. Payment between a supervisor and supervisee.
  - 1. A supervising psychologist may pay a monetary stipend or fee to a supervisee if the amount paid by the supervisor is not based on the supervisee's productivity or revenue generated by the supervisee;
  - 2. A supervising psychologist who accepts a fee for providing the supervisory service in Arizona may be subject to disciplinary action by the Board; and
  - 3. The Board shall look to the law of the jurisdiction in which the supervision occurred to determine whether to include as part of the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D) hours for which an applicant paid the supervisor.
- D. A psychologist who supervises the professional experience of an unlicensed individual is professionally responsible for all work done by the individual during the supervised experience.
- E. The Board shall include in the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D), hours obtained through a training program only if the training program provides the supervision required under A.R.S. § 32-2071(F)(2).
  - c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
  - d. Approval of all individuals providing supervision at sites external to the training site,
  - e. Total number of hours to be accrued during the supervised preinternship professional experience,
  - f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
  - g. Total number of hours of supervision during the supervised preinternship professional experience,
  - h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
  - i. Acknowledgment that ethics training will be included in all activities.
- B. The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071 (F):
  - 1. The written statement required under A.R.S. § 32-2071 (F)(9):
    - a. Was established no later than the time the applicant entered the internship or training program; and
    - b. Corresponds to the internship or training program the applicant completed;
  - 2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071 (F)(2);
  - 3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071 (F)(6);
  - 4. The two hours a week of other learning activities required under A.R.S. § 32-2071 (F)(6) include one or more of the following
    - a. Case conferences involving a case in which the applicant was actively involved,
    - b. Seminars involving clinical issues,
    - c. Co-therapy with a professional staff person including discussion,
    - d. Group supervision, or
    - e. Additional individual supervision;
  - 5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071 (F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
  - 6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071 (F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071 (F).

**Historical Note**

Adopted effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-128 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-209 renumbered to R4-26-208; new Section R4-26-209 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-210. Supervised Professional Experience**

- A. The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071 (E):
  - 1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
  - 2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and
  - 3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
    - a. Training activities included and the amount of time allotted to each activity,
    - b. Goals and objectives of each training activity,

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- C. Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant's supervised postdoctoral experience shall involve direct client or patient contact. If an applicant's supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours. While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.

**Historical Note**

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-211. Foreign Graduates**

- A. Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from an institution of higher education located outside the U.S. and its territories shall demonstrate that the applicant's formal education is equivalent to a doctoral degree in psychology from a regionally accredited educational institution as described in A.R.S. § 32-2071(A).
- B. The Board shall find that the institution of higher education from which an applicant under subsection (A) graduated is equivalent to a regionally accredited education institution only if the institution of higher education is included in one of the following:
1. International Handbook of Universities, published for the International Association of Universities by Stockton Press, 345 Park Avenue South, 10th floor, New York, NY 10010-1708;
  2. Commonwealth Universities Yearbook, published for the Association of Commonwealth Universities by John Foster House, 36 Gordon Square, London, England, WC1H 0PF; or
  3. Another source the Board determines provides reliable information.
- C. The academic transcript of an applicant under subsection (A) who graduated from an institution included under subsection (B) shall be translated into English and evaluated by a member organization of the National Association of Credential Evaluation Services (NACES). The applicant is responsible for paying all expenses incurred to obtain a translation and review of the academic transcript. An applicant can find information about obtaining a professional credential review at [www.naces.org](http://www.naces.org).
- D. When the credential review required under subsection (C) is completed, the NACES member organization shall submit the review report to the Board. The Board shall review the report and determine whether the applicant's education meets the standard in subsection (A).
- E. Upon written request, the Board may waive the credential review required under subsection (C) for an applicant who graduated from a doctoral program that is accredited by the accreditation panel of the Canadian Psychological Association.
- F. After the Board determines that the formal education of an applicant under subsection (A) is equivalent to a doctoral degree in psychology from a regionally accredited educational institution, the applicant shall provide evidence to the Board that the applicant has met all other requirements for licensure.

**Historical Note**

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**ARTICLE 3. REGULATION****R4-26-301. Rules of Professional Conduct**

- A. The Board incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, effective June 1, 2003. The incorporated materials do not include any later amendments or editions. A copy of the standards is available from the American Psychological Association Order Department, 750 First Street, NE, Washington, DC 20002-4242, [www.apa.org/ethics/code](http://www.apa.org/ethics/code), or the Board office.
- B. A licensee shall practice psychology in accordance with the standards incorporated under subsection (A).

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981. Amended effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-150 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-302. Informal Interviews**

- A. When a complaint is scheduled for informal interview, the Board shall send written notice of an informal interview to the licensee who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 20 days before an informal interview.
- B. The Board shall include the following in the written notice of an informal interview:
1. The time, date, and place of the interview;
  2. An explanation of the informal nature of the proceedings;
  3. The licensee's right to appear at the informal interview with legal counsel licensed in Arizona or without legal counsel;
  4. A statement of the allegations and issues involved;
  5. The licensee's right to a formal hearing instead of the informal interview; and
  6. Notice that the Board may take disciplinary action at the conclusion of the informal interview;
- C. The procedure used during an informal interview may include the following:
1. Swearing in and taking testimony from the licensee, complainant, and witnesses, if any;

As of March 18, 2020

### 32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
  - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
  - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:
  - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
  - (b) Issues that the guardian agrees to specifically reserve to the individual.
10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

- (l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client or patient, a student or a supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any

psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2062. Board; qualifications; appointments; terms; compensation; immunity

A. The state board of psychologist examiners is established consisting of ten members appointed by the governor pursuant to section 38-211.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Seven members shall be licensed pursuant to this chapter, and three shall be public members who are not eligible for licensure. The board shall have at all times, except for the period when a vacancy exists, at least two members who are licensed as psychologists and who are full-time faculty members from universities in this state with a doctoral program in psychology that meets the requirements of section 32-2071, at least three members who are psychologists in professional practice and at least two members who are behavior analysts in professional practice and who are members of the committee on behavior analysts. The public members shall not have a substantial financial interest in the health care industry and shall not have a household member who is eligible for licensure under this chapter.

C. Each member shall serve for a term of five years beginning and ending on the third Monday in January.

D. A vacancy on the board occurring other than by the expiration of term shall be filled by appointment by the governor for the unexpired term as provided in subsection C of this section. The governor, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Board members shall receive compensation in the amount of one hundred dollars for each cumulative eight hours of actual service in the business of the board and reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

F. Members of the board and its employees, consultants and test examiners are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.
  2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
  3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
  4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.
  5. Adopt an official seal for attestation of licenses and other official papers and documents.
  6. Investigate charges of violations of this chapter and board rules and orders.
  7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.
  8. Annually elect from among its membership a chairman, a vice-chairman and a secretary, who serve at the pleasure of the board.
  9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.
  10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.
  11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.
  12. Adopt rules regarding the use of telepractice on or before June 30, 2016.
  13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to the licensing and regulation of behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.
- B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2064. Meetings; committees; quorum

A. The board shall hold regular quarterly meetings at a time and place determined by the chairman. The board shall hold special meetings the chairman determines necessary to carry out the functions of the board.

B. The chairman may establish committees from the board membership necessary to carry out the functions of the board. The board may establish committees of licensed psychologists to act as consultants to the board. Members of consultant committees are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

C. A majority of board members constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2065. Board of psychologist examiners fund; separate behavior analyst account

A. The board of psychologist examiners fund is established.

B. Except as provided in section 32-2081 and section 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety percent in the board of psychologist examiners fund.

C. All monies deposited in the board of psychologist examiners fund are subject to section 35-143.01.

D. All monies deposited in the board of psychologist examiners fund pursuant to section 32-2067 and any monies received pursuant to section 32-2063, subsection C for psychologist licensing and regulation must be used only for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter and may not be used for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter.

E. All monies deposited in the board of psychologist examiners fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation must be used only for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter and may not be used for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter.

F. The board shall establish a separate account in the fund for monies transferred to the fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation.

32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.
2. The names and addresses of all licensees.
3. The current board rules.
4. A copy of this chapter.
5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

**32-2067. Fees; alternative payment methods**

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.
2. Two hundred dollars for an application for a temporary license to practice psychology.
3. Two hundred fifty dollars for reapplication for an active license.
4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.
5. Fifty dollars for a duplicate license.
6. Five hundred dollars for biennial renewal of an active license.
7. Eighty-five dollars for biennial renewal of an inactive license.
8. Three hundred dollars for the reinstatement of an active or inactive license.
9. Three hundred fifty dollars for any additional examination.
10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.
11. Five dollars for the sale of a duplicate renewal receipt.
12. Five dollars for the sale of a copy of the board's statutes and rules.

13. Two dollars for verification of a license.
  14. Ten dollars for the sale of each audiotape of board meetings.
  15. Five cents per name for the sale of computerized discs that contain the name of each licensee.
  16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.
  17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.
  18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.
- B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.
- C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.
- D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.
- E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

**32-2071. Qualifications of applicant; education; training**

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:
  - (a) The New England association of schools and colleges.
  - (b) The middle states association of colleges and schools.
  - (c) The north central association of colleges and schools.
  - (d) The northwest association of schools and colleges.
  - (e) The southern association of colleges and schools.

(f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

(a) Scientific and professional ethics and standards in psychology.

(b) Research, which may include design, methodology, statistics and psychometrics.

(c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.

(d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.

(e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.

(f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and the administration, scoring and interpretation of psychological test batteries for the diagnosis of cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions for the treatment of mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.

2. Additional internship hours as described in subsection F of this section.

3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.

2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must assure the quality, breadth and depth of training experience through the specification of goals and objectives of the supervised preinternship professional experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

- (a) At least fifty per cent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment,

assessment, interviews, report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five per cent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) After September 1, 2013, at least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty per cent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty per cent shall be through in-person group supervision. At least seventy-five per cent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five per cent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to assure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.

3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.

4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.

5. A minimum of twenty-five per cent of a trainee's supervised professional experience hours is in direct client or patient contact.

6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.

7. The training program includes interaction with other psychology trainees.

8. Trainees have a title that designates their trainee status.

9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.

2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty per cent of the supervisee's time shall be in direct contact with clients or patients. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine if an applicant satisfies the requirements of subsection A relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a

program or professional school of psychology that has either an established American psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.
2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.
3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

#### 32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.
2. Has passed any examination or examinations required by section 32-2072.
3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.
4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.
5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.
6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved

before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.
2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.
3. Is a diplomate of the American board of professional psychology.

#### 32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.
2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.

2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. Beginning January 1, 2015, the board may issue a temporary license to an individual who submits an application for temporary licensure and who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months from the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term inactive to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure

examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, beginning May 1, 2017, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

32-2075. Exemptions from licensure

A. This chapter does not limit the activities, services and use of a title by the following:

1. A school psychologist employed in a common school, high school or charter school setting and certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
  2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and is supervised by a doctorate position employee who is licensed as a psychologist, including a temporary licensee.
  3. A student of psychology pursuing an official course of graduate study at an educational institution accredited as provided in section 32-2071, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
  4. A person who resides outside of this state and who is currently licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada if the activities and services conducted in this state are within the psychologist's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this chapter and the client or patient, public or consumer is informed of the limited nature of these activities and services and that the psychologist is not licensed in this state. A person may exceed the twenty-day limitation requirement of this paragraph to assist in public service that is related to a disaster as acknowledged by the board.
  5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state or other institutional services if the services are a part of the faculty duties of that person's salaried position, with the exception of faculty providing direct services or faculty providing supervision of students providing direct services, and the person has received a doctoral degree as provided in section 32-2071.
  6. A supervisee who is pursuing a supervised professional experience pursuant to section 32-2071, subsection G if the services or activities are provided under the direct supervision of a licensed psychologist who is licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience, clients or patients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.
- B. This chapter does not prevent a member of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a psychologist.

### 32-2076. Unauthorized practice of medicine

This chapter does not authorize a person to engage in any manner in the practice of medicine pursuant to chapter 13, 17 or 29 of this title, except that a person licensed as provided in this chapter may diagnose, treat and correct human conditions ordinarily within the scope of the practice of a psychologist.

### 32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to

the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.

B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days of receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. The complaint screening committee shall review all complaints, and based on the information provided pursuant to subsection A or F of this section may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, it may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for a period not to exceed twelve months, restriction of the license or restitution of fees to a client or patient resulting from violations of this chapter. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

L. If the board finds that the information provided pursuant to subsection A or F of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

M. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

N. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

O. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

P. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client or patient.

Q. Except as provided in section 41-1092.08, subsection H or a decision made pursuant to subsection C of this section, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

R. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services, it shall inform the appropriate criminal justice agency.

S. If the board finds that it can take rehabilitative or disciplinary action at any time during the investigative or disciplinary process, it may enter into a consent agreement with the psychologist to limit or restrict the psychologist's practice or to rehabilitate the psychologist in order to protect the public and ensure the psychologist's ability to safely engage in the practice of psychology. The board may also require the psychologist to successfully complete a board approved rehabilitative, retraining or assessment program at the psychologist's expense.

**32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal**

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

#### 32-2083. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person not licensed pursuant to this chapter from practicing psychology.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of psychology, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of psychology without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this chapter.

#### 32-2084. Violations; classification

A. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to engage in the practice of psychology.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice psychology pursuant to this chapter by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice psychology.

C. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to:

1. Use the designation "psychology", "psychological" or "psychologist".
  2. Use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice psychology in this state.
- D. It is a class 2 misdemeanor for a person not licensed or not exempt from licensure pursuant to this chapter to use the designation "psychotherapist" or other derivation of the root word "psycho".

#### 32-2085. Confidential communications

- A. The confidential relations and communication between a client or patient and a psychologist licensed pursuant to this chapter, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client or patient waives the psychologist-client privilege in writing or in court testimony, a psychologist shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the psychologist's practice. The psychologist shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law.
- B. The psychologist shall ensure that client or patient records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the psychologist.

#### 32-2086. Treatment and rehabilitation program

- A. The board may establish a confidential program for the treatment and rehabilitation of psychologists who are impaired. The treatment and rehabilitation may include education, intervention, therapeutic treatment and posttreatment monitoring and support. The licensee is responsible for the costs associated with the treatment and rehabilitation, including monitoring.
- B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:
1. Periodic reports to the board regarding treatment program activity.
  2. Release to the board on demand of all treatment records.
  3. Quarterly reports to the board regarding each psychologist's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
  4. Immediate reporting to the board of the name of an impaired psychologist whom the treating organization believes to be a danger to the public or to the psychologist.
  5. Reports to the board, as soon as possible, of the name of a psychologist who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.
- C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-2067 for the operation of the program established by this section.

D. A psychologist who is impaired and who does not agree to enter into a stipulated order with the board shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a psychologist who has been placed on a probation order or who has entered into a stipulation order pursuant to this section is not impaired by alcohol or illegal substances after that order is no longer in effect, the board or its designee may require the psychologist to submit to bodily fluid examinations and other examinations known to detect the presence of alcohol or illegal substances at any time within the five consecutive years following termination of the probationary or stipulated order.

F. A psychologist who is impaired by alcohol or illegal substances and who was under a board stipulation or probationary order that is no longer in effect must ask the board to place the psychologist's license on inactive status with cause. If the psychologist fails to do this, the board shall summarily suspend the license pursuant to section 32-2081. In order to reactivate the license the psychologist must successfully complete a board approved long-term care residential treatment program, an inpatient hospital treatment program or an intensive outpatient treatment program and shall meet the requirements of section 32-2074. After the psychologist completes treatment the board shall determine if it should reactivate the license without restrictions or refer the matter to a formal hearing for the purpose of suspending or revoking the license or to place the psychologist on probation with restrictions necessary to ensure the public's safety.

G. The board may revoke the license of a psychologist if that psychologist is impaired by alcohol or illegal substances and was previously placed on probation pursuant to subsection F of this section. If the licensee is no longer on probation, the board may accept the surrender of the license if the psychologist admits in writing to being impaired by alcohol or illegal substances.

H. An evaluator, treatment provider, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a psychologist who is attending the program pursuant to board action.

### 32-2087. Psychology interjurisdictional compact

#### 32-2087.01. Participation in compact as condition of employment; prohibition

An employer may not require a psychologist to seek licensure through the psychology interjurisdictional compact enacted by section 32-2087 as a condition of initial or continued employment as a psychologist in this state. An employer may require that a psychologist obtain and maintain a license to practice psychology in multiple states, if the psychologist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

#### 32-2087.02. Open meeting requirements

If a meeting, or a portion of a meeting, of the psychology interjurisdictional compact commission is closed pursuant to section 32-2087, article X, subsection B, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

#### 32-2087.03. State board of psychologist examiners; notice of commission actions

The state board of psychologist examiners, within thirty days after a psychology interjurisdictional compact commission action, shall post on the board's public website notice of any commission action that may affect a psychologist's license.

### 32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
  - (a) A person or entity that receives behavior analysis services.
  - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
  - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.
8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain

practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.

11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.

12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.

(e) Gross negligence in the practice of a behavior analyst.

(f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.

(i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

(l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.

- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client, student or supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

### 32-2091.01. Fees

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

### 32-2091.02. Qualifications of applicant

Beginning January 1, 2011, a person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.

7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

### 32-2091.03. Educational and training standards for licensure

An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that the number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience or independent fieldwork, university practicum or intensive university practicum. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

### 32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.

4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.

5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction, if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Beginning May 1, 2017, a person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

### 32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. The committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or C of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or C of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or C of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, it may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or C of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

### 32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

### 32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

### 32-2091.12. Violations; classification

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

### 32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

#### 32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

#### 32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. Committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

**D-6**

**BOARD OF PSYCHOLOGIST EXAMINERS (R20-0504)**

Title 4, Chapter 26, Article 4, Behavior Analysts

**Amend:** R4-26-401, R4-26-403, R4-26-404.1, R4-26-404.2, R4-26-406,  
R4-26-408, R4-26-415

**Repeal:** R4-26-407



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS (R20-0504)**  
Title 4, Chapter 26, Article 4, Behavior Analysts

**Amend:** R4-26-401, R4-26-403, R4-26-404.1, R4-26-404.2, R4-26-406,  
R4-26-408, R4-26-415

**Repeal:** R4-26-407

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### **Summary:**

This regular rulemaking from the Board of Psychologist Examiners (Board) seeks to amend rules in Title 4, Chapter 26, Article 4 related to Behavior Analysts. This rulemaking is being conducted to implement a course of action that was proposed in the Board's 5YRR which was approved by the Council at the August 6, 2019 Council Meeting. In addition to making amendments to improve the clarity, conciseness, and understandability of the rules, this rulemaking seeks to repeal R4-26-207(B)(2) regarding licensure by reciprocity. The Board determined the rule, as written, is confusing to potential applicants because the rule, in essence, requires compliance with the same procedure as required for initial licensure. The Board will instead issue a license by reciprocity pursuant to A.R.S. § 32-2091.04, which relates specifically to licensure by reciprocity for behavior analysts as well as the general reciprocity statute found at A.R.S. § 32-4302. Therefore, the Board is attempting to eliminate redundancy within its rules as well as eliminate possible confusion or inconsistency between its rules and the statutes.

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?**

The Board indicates that 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 expects minimal economic impact from the rule change since the rule has to do with making board certification requirements clearer for applicants. No additional positions need to be created to enforce the rule, and the burden of this rule will be on the applicants.

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

The Board expects that the impact on the affected stakeholders will be minimal; and the clarity of the rulemaking will outweigh any additional time the Board or applicants will spend checking over applications.

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

Key stakeholders include: the Department, licensees, and applicants.

The Department will benefit from this rulemaking by having rules that are clearer and consistent with statutes and industry standards. Licensees and applicants will benefit from the rulemaking by having clearer rules for the application process, removing sources of potential confusion.

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

The Board indicates there were no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Board indicates that it did not receive any comments related to this rule package. The Board indicates it held a public hearing on March 17, 2020 in order to give the public an opportunity to comment on the rules, but no comments were received.

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

These rules require the issuance of licenses. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a license, the agency shall use a general permit. However, an agency may use an alternative type of license if specifically authorized by state statute. See A.R.S. § 41-1037(A)(2).

The Board indicates that the licenses issued are individualized licenses rather than general permits, but are specifically authorized by A.R.S. § 32-2063(A)(3) and A.R.S. § 32-2091.02. Therefore, the Board is in compliance with A.R.S. § 41-1037.

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

The Board indicates there is no corresponding federal law applicable to the subject matter of this rulemaking.

**11. Conclusion**

This rulemaking seeks to implement the course of action proposed in the Board's 5YRR approved on August 6, 2019 by amending several rules to improve their clarity, conciseness, and understandability, as well as removing rules that may be redundant, confusing, or inconsistent with statute. The Board is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



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DOUGLAS A. DUCEY  
Governor

HEIDI HERBST PAAKKONEN  
Executive Director

March 17, 2020

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

**Re: A.A.C.      Title 4. Professions and Occupations  
                         Chapter 16. Board of Psychologist Examiners  
                         Behavior Analysts**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on March 17, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on August 6, 2019.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
  - 1. Cover letter signed by the Executive Director;
  - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
  - 3. Economic, Small Business, and Consumer Impact Statement

Regards,

Heidi Herbst Paakkonen, MPA  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

**PREAMBLE**

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

**Rulemaking Action**

R4-26-401	Amend
R4-26-403	Amend
R4-26-404.1	Amend
R4-26-404.2	Amend
R4-26-406	Amend
R4-26-407	Repeal
R4-26-408	Amend
R4-26-415	Amend

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

Authorizing statute: A.R.S. § 32-2063(A)(9)

Implementing statute: A.R.S. §§ 32-2091 through 32-2091.15

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

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 205, January 31, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 194, January 31, 2020

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

Name: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners  
1740 W Adams Street, Suite 3403  
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

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

In response to a five-year-review report approved by Council on August 6, 2019, the Board is making minor changes to ensure the rules are consistent with statute and industry standards and are clear, concise, and understandable. The Board is also repealing R4-26-407 regarding licensure by reciprocity. The Board determined the rule, as written, is confusing to potential applicants because the rule, in essence, requires compliance with the same procedure as required for initial licensure. The Board will be able to issue a license by reciprocity by relying on A.R.S. §§ 32-2091.04 and 32-4302. An exemption from Executive Order 2019-01 was provided for this rulemaking by Emily Rajakovich, of the Governor's Office, in an e-mail dated January 10, 2020.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rule making.

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

Not applicable

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

The Board expects the minor changes made will have minimal economic impact.

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

No changes were made between the proposed and final rules.

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

The Board received no written comments regarding the rulemaking. No one commented at the oral proceeding on March 17, 2020.

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. § 32-2091.02) and rule.

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

Federal law does not apply to the subject matter of the rules.

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

No analysis was submitted.

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

None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**  
**ARTICLE 4. BEHAVIOR ANALYSTS**

Section

- R4-26-401. Definitions
- R4-26-403. Application for Initial License
- R4-26-404.1 Education Requirement
- R4-26-404.2 Supervised Experience Requirement
- R4-26-406. Ethical Standard
- R4-26-407. ~~License by Reciprocity~~ Repealed
- R4-26-408. License Renewal
- R4-26-415. Informal Interview

## ARTICLE 4. BEHAVIOR ANALYSTS

### R4-26-401. Definitions

A. The definitions in A.R.S. § 32-2091 apply in this Article.

B. Additionally, in this Article:

1. “Accredited” means an institution of higher education:
  - a. In the U.S. is listed with the Council for Higher Education Accreditation,
  - b. In Canada is a member of the Universities Canada, and
  - c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
2. “Advertising” means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
3. “Applicant” means an individual who applies to the Board for an initial or renewal license.
4. “BACB” means the Behavior Analyst Certification Board, Inc.®.
5. “Confidential information” means:
  - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
  - b. A record that is classified as confidential by a statute or rule applicable to the Board;
  - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client’s diagnosis, treatment, or personal family life; and
  - d. The following regarding an applicant or licensee:
    - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
    - ii. Home address, telephone number, and e-mail address;
    - iii. Test scores;
    - iv. Date of birth;
    - v. Place of birth; and
    - vi. Social Security number.
6. “Gross negligence” means an extreme departure from the ordinary standard of care.
7. “Inactive status” means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.

8. "License period" means:
  - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
  - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
  - a. Nature of the alleged conduct,
  - b. Severity of the alleged conduct,
  - c. Recentness of the alleged conduct,
  - d. Actions taken by the applicant to remedy potential violations, and
  - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
10. "Party" means the Board, an applicant, a licensee, or the state.
11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
14. "Renewal year" means:
  - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
  - b. Each even-numbered year for a licensee who holds an even-numbered license.
15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.

**R4-26-403. Application for Initial License**

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall complete and submit an application form, which is available from the Board office and on its website, ~~and provide the following information:~~

1. ~~Full name;~~

2. ~~Other names by which the applicant is or ever has been known;~~
3. ~~Home address and telephone number;~~
4. ~~Business name and address;~~
5. ~~Work telephone and fax numbers;~~
6. ~~E-mail address;~~
7. ~~Gender;~~
8. ~~Date of birth;~~
9. ~~Social Security number;~~
10. ~~An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;~~
11. ~~Place of birth;~~
12. ~~A statement of whether the applicant:~~
  - a. ~~Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;~~
  - b. ~~Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;~~
  - c. ~~Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;~~
  - d. ~~Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;~~
  - e. ~~Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;~~
  - f. ~~Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;~~
  - g. ~~Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;~~
  - h. ~~Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;~~
  - i. ~~Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the~~

~~ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation;~~

- ~~j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;~~
- ~~k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;~~
- ~~l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;~~
- ~~m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and~~
- ~~n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently; and~~

~~13. The applicant's signature attesting that all statements in the application are true in every respect.~~

**B.** Additionally, an applicant shall submit:

- 1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
- 2. The application fee required under R4-26-402;
- 3. A written request that Board staff verify with the BACB that the applicant passed the examination referenced in R4-26-404;
- ~~3.4.~~ As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
- ~~4.5.~~ The Board's Mandatory Confidential Information form.

**C.** Additionally, an applicant shall ensure ~~that~~ the following is submitted directly to the Board:

- ~~1. Verification the applicant passed the examination referenced in R4-26-404 submitted by the BACB;~~
- ~~2.1.~~ Verification of supervised experience that meets the standards specified in R4-26-404.2. For the purpose of licensure, the Board shall accept the following as verification of supervised experience:
  - a. From the supervisor of the experience:

- i. A copy of the BACB final experience verification form, signed by the supervisor, submitted by the applicant to the BACB when the applicant applied to the BACB for certification; or
  - ii. A completed Board verification form; or
  - b. From the applicant. If the applicant demonstrates to the Board that a supervisor cannot be located, or at the request of the Board, the applicant may submit a copy of each BACB final experience verification form the applicant submitted to the BACB when the applicant applied to the BACB for certification; and
  - c. If the Board requires additional information, the Board shall accept from the applicant or supervisor of the experience:
    - i. A copy of the plan required under R4-26-404.2(C)(6), and
    - ii. Letters or other documentation from third parties who observed the supervisory relationship;
- 3.2. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
- 4.3. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
- 5.4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

**R4-26-404.1. Education Requirement**

- A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B. To be licensed as a behavior analyst in Arizona, an individual shall have a master’s degree or higher completed: from
  - 1. From an accredited institution of higher education; and
  - 2. In a program that meets the requirements specified by the BACB.
  - 1. ~~Behavior analysis, education, psychology, or another subject area related to behavior analysis acceptable to the Board; or~~
  - 2. ~~A degree program in which the applicant completed a BACB-approved course sequence.~~

**R4-26-404.2. Supervised Experience Requirement**

**A. Application of this Section:**

1. This Section does not apply to an individual who was certified by the BACB with at least 1500 hours of supervised experience before January 1, 2015; and
2. This Section applies in part to an individual who was certified by the BACB with fewer than 1500 hours of supervised experience before January 1, 2015. To be licensed in Arizona, the individual shall complete additional hours of supervised experience to meet the 1500-hour requirement under A.R.S. § 32-2091.03 and ensure all hours of supervised experience obtained after December 31, 2014, meet the requirements of this Section.

**B. To be licensed as a behavior analyst in Arizona, an individual shall have completed 1500 hours of supervised experience. The Board shall accept, for the purpose of licensure, hours of supervised experience obtained on or after January 1, 2015, that meet the following standards:**

1. Supervised independent fieldwork. The supervisee shall be supervised at a frequency that meets the standards of the BACB at the time of supervision;
2. Practicum. The supervisee shall:
  - a. Participate in a practicum in behavior analysis within a program approved by the BACB;
  - b. Achieve a passing grade in the practicum;
  - c. Obtain graduate-level academic credit for the practicum; and
  - d. Be supervised at a frequency that meets the standard of the BACB at the time of supervision;
3. Intensive practicum. The supervisee shall:
  - a. Participate in an intensive practicum in behavior analysis within a program approved by the BACB;
  - b. Achieve a passing grade in the intensive practicum;
  - c. Obtain graduate-level academic credit for the intensive practicum; and
  - d. Be supervised at a frequency that meets the standards of the BACB at the time of supervision;
4. Combination of experience categories. The supervisee may accrue hours of supervised experience in a single category or may combine any two or three categories listed in subsections (B)(1) through (3). However, the supervisee shall accrue supervised experience in only one category in each supervisory period; and
5. For all categories of supervised experience, the supervisee shall accrue:
  - a. No fewer than 20 hours and no more than 130 hours, including time spent in supervision, each month; or
  - b. The number of hours that meets the standards of the BACB at the time of supervision.

**C. Standards for supervised experience.**

1. Onset of supervised experience. The Board shall not accept, for the purpose of licensure, hours of supervised experience completed before attending courses required under R4-26-405. However, the Board shall accept hours of supervised experience completed concurrent with attending courses required under R4-26-405.
2. Appropriate activities. The Board shall accept, for the purpose of licensure, hours of supervised experience that demonstrate participation in supervised experiences with various populations, at various sites, with multiple supervisors, and including all of the following activity areas:
  - a. Conducting assessments related to behavioral intervention;
  - b. Designing, implementing, and monitoring skill-acquisition and behavior-reduction programs;
  - c. Overseeing implementation of behavior-analytic programs by others;
  - d. Training, designing behavioral systems, and managing performance; and
  - e. Performing other activities directly related to behavior analysis such as attending planning meetings regarding the behavior analytic program, researching literature related to the program, and talking with others about the program.
3. Appropriate clients. The Board shall accept, for the purpose of licensure, hours of supervised experience with appropriate clients.
  - a. An appropriate client is one for whom behavior-analytic services are suitable.
  - b. A client is not appropriate if:
    - i. The client is related to the supervisee,
    - ii. The client's primary caretaker is related to the supervisee, or
    - iii. The supervisee is the client's primary caretaker.
4. Supervisor qualifications. The Board shall accept, for the purpose of licensure, hours of supervised experience only if the supervisor:
  - a. Was licensed by the state in which the supervision occurred during the period of supervised experience; or
  - b. If licensure of behavior analysts was not available or not in effect in the state in which the supervision occurred or during the period of supervised experience, was certified as a behavior analyst by the BACB; and
  - c. Was not related to, subordinate to, or employed by the supervisee during the period of supervised experience. Employment does not include payment made to the supervisor by the supervisee for supervisory services.
5. Nature of supervision. The Board shall accept, for the purpose of licensure, hours of supervised experience that are effective in improving and maintaining the behavior-analytic, professional, and ethical skills of the supervisee.

- a. Effective supervision includes:
    - i. Developing performance expectations for the supervisee;
    - ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is preferred but use of web cameras, ~~videotape~~ video record, videoconferencing, or a similar means that provides synchronous observation is acceptable;
    - iii. Modeling technical, professional, and ethical behavior for the supervisee;
    - iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;
    - v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;
    - vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and
    - vii. Evaluating the effects of supervising the supervisee; and
  - b. Effective supervision may be conducted:
    - i. Individually for at least half of the total supervised hours in each supervisory period; and
    - ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.
6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:
- a. States the responsibilities of both the supervisor and supervisee;
  - b. Requires the supervisor to complete eight hours of supervision training provided by BACB;
  - c. Includes a description of appropriate activities and instructional objectives;
  - d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;
  - e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;
  - f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and
  - g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.
7. ~~Documentation of supervision. If the Board determines documentation of supervision is needed to enable it to assess an applicant's qualifications, the applicant shall submit documentation of hours of supervised experience. When requested, the Board shall accept, for the purpose of licensure:~~

- a. ~~Copies of the BACB Experience Verification Forms submitted by the applicant to the BACB when the applicant applied to the BACB for certification;~~
  - b. ~~Other documentation of supervision that includes the same data elements contained in the BACB Experience Verification Form; or~~
  - e. ~~If the applicant is unable to obtain documentation under subsection (C)(7)(a) or (C)(7)(b) or if the applicant disagrees with the total hours recorded on the documentation, the Board shall accept:~~
    - i. ~~A copy of the plan required under subsection (C)(6);~~
    - ii. ~~Copies of the documentation maintained under subsection (C)(7)(a) or (C)(7)(b), and~~
    - iii. ~~Letters or other documentation from third parties who observed the supervisory relationship.~~
8. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through ~~(7)~~ (6).

**R4-26-406. Ethical Standard**

The In fulfilling its responsibilities under law, the Board ~~incorporates by reference~~ shall rely on the most current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts, January 1, 2016, published by the BACB and available for review at the Board office and online at www.BACB.com. ~~The incorporated material includes no later editions or amendments unless the Board determines public health and safety is not sufficiently protected by the current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts.~~

**R4-26-407. ~~License by Reciprocity~~ Repealed**

~~An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual is licensed or certified as a behavior analyst in good standing and:~~

- 1. ~~Obtained a graduate degree from an accredited institution of higher education in a subject area specified in R4-26-404.1;~~
  - 2. ~~Completed a minimum of 1,500 hours of supervised experience;~~
  - 3. ~~Completed a minimum of 270 classroom hours of graduate-level instruction in the content areas listed in R4-26-405 or was certified as a behavior analyst by the BACB before January 1, 2015;~~
- ~~and~~

4. ~~Passed the examination referenced in R4-26-404.~~

**R4-26-408. License Renewal**

- A. ~~Beginning May 1, 2017, a~~ A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B. The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C. To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website, ~~and provide the following information:~~
  1. ~~License number;~~
  2. ~~Name;~~
  3. ~~Other names by which the licensee is or ever has been known;~~
  4. ~~Home address and telephone number;~~
  5. ~~Business name and address;~~
  6. ~~Work telephone and fax number;~~
  7. ~~E-mail address;~~
  8. ~~Date of birth;~~
  9. ~~Social Security number;~~
  10. ~~BACB certificate number, if applicable;~~
  11. ~~A statement of whether the licensee:~~
    - a. ~~Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;~~
    - b. ~~Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;~~
    - c. ~~Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;~~
    - d. ~~Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;~~
    - e. ~~Is currently a member of a professional association and if so, the name of the professional association;~~
    - f. ~~Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;~~

- ~~g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntarily terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;~~
  - ~~h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;~~
  - ~~i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;~~
  - ~~j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;~~
  - ~~k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;~~
  - ~~l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;~~
  - ~~m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and~~
  - ~~n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;~~
  - ~~12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;~~
  - ~~13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and~~
  - ~~14. The licensee's signature attesting that the information provided is true in every respect.~~
- D.** Additionally, to renew a license, a licensee shall submit:

1. The license renewal fee required under R4-26-402; and
  2. If the documentation previously submitted under ~~R4-26-403(B)(3)~~ R4-26-404(B) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; ~~and~~
  3. ~~The Board's Mandatory Confidential Information form.~~
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
  2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
  3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
  2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

**R4-26-415. Informal Interview**

- A.** As authorized by A.R.S. § ~~32-2091.09(H)~~ 32-2091.09, the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.

- B.** The Board shall ensure that the written notice of informal interview contains the following information:
1. The time, date, and place of the informal interview;
  2. An explanation of the informal nature of the proceedings;
  3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
  4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
  5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
  6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
  7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C.** The Board shall ensure that an informal interview proceeds as follows:
1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
  2. Introduction of the Board members, staff, and Assistant Attorney General present;
  3. Swearing in of the respondent, complainant, and witnesses;
  4. Brief summary of the allegations and purpose of the informal interview;
  5. Optional opening comment by the respondent and complainant;
  6. Questioning of the respondent and witnesses by the Board;
  7. Questioning of the complainant by the respondent through the Chair;
  8. Optional additional comments by the respondent and complainant; and
  9. Deliberation by the Board.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

1. Identification of the rulemaking:

In this rulemaking, the Board:

- Removed from rule detail regarding license applications to reduce the possibility of confusion caused by having the rule inconsistent with the license application;
- Clarified that documentation of supervised experience is submitted with an application for licensure and specified acceptable documentation;
- Made minor amendments to ensure the rules are consistent with statute and industry standards;
- Repealed the rule regarding licensure by reciprocity because it was confusing to applicants. The Board will rely on A.R.S. §§ 32-2091.04 and 32-4302 to grant licensure by reciprocity.
  - a. The conduct and its frequency of occurrence that the rule is designed to change:  
Until the rulemaking is completed, the rules will contain multiple sources of potential confusion and inconsistency with statute and industry standards.
  - b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:  
It is not good government for rules to contain multiple sources of potential confusion and inconsistency with statute and industry standards.
  - c. The estimated change in frequency of the targeted conduct expected from the rule change:  
When the rulemaking is complete, the rules will contain neither sources of potential confusion nor inconsistencies with statute or industry standards.

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

The Board expects the rulemaking to have minimal economic impact. There are currently 448 licensed behavior analysts in Arizona. In a 5YRR submitted to the Council in October 2017, the Board indicated there were 260 licensed behavior analysts, which means there has been

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

more than a 70 percent increase in the number of licensees during the last two years. During the last calendar year, 191 of the licensees renewed their license. Because of the confusion in the rule regarding application by reciprocity, there were no applicants. The four FTEs who work for the Board devote some time to licensing and regulating behavior analysts. Approximately \$27,000 of the Board's appropriation is dedicated to licensing and regulating behavior analysts.

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: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners  
1740 W Adams Street, Suite 3403  
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

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

Licensees, applicants, and the Board are persons directly affected by, bear the costs of, and directly benefitted from the rulemaking.

Licensees and applicants will benefit from removing sources of potential confusion from the rules and making them consistent with statute and industry standards. No costs are associated with these changes. Applicants will benefit from the clarity regarding documentation of supervised experience. There are minor costs associated with ensuring verification forms are completed, maintained, and submitted.

The Board incurred the cost of completing this rulemaking and will have the benefit of clear rules that are consistent with statute and industry standards.

5. Cost-benefit analysis:

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

The Board is the only agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not need an additional FTE to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:  
No political subdivision is directly affected by the rulemaking.
  - c. Costs and benefits to businesses directly affected by the rulemaking:  
Behavior analysts are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.
6. Impact on private and public employment:  
The rulemaking will have no impact on private or public employment.
7. Impact on small businesses<sup>2</sup>:
- a. Identification of the small business subject to the rulemaking:  
Behavior analysts are small businesses subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
Behavior analysts will incur the cost of ensuring forms verifying supervised experience are completed, maintained, and submitted.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
The cost of ensuring forms verifying supervised experiences are completed, maintained, and submitted is minor. The Board has reduced this minor cost by providing it will accept alternate verification forms and allowing forms to be submitted by multiple persons.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
The rulemaking has no direct effect on private persons or consumers.
9. Probable effects on state revenues:  
There is no effect on state revenue.
10. Less intrusive or less costly alternative methods considered:  
The Board reduced the minor cost of submitting verification forms regarding supervised experience by providing it will accept alternate verification forms and allowing forms to be submitted by multiple persons.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

## CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.

- G.** If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.
- H.** For purposes of this Section, “contested case” is defined in A.R.S. § 41-1001 and “appealable agency action” is defined in A.R.S. § 41-1092.
- I.** A person who files a complaint with the Board against a licensee:
1. Is not a party to:
    - a. A Board administrative action, decision, or proceeding; or
    - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
  2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

**Historical Note**

Former Section R4-26-10 renumbered and adopted as R4-26-57 effective July 27, 1979 (Supp. 79-4). Amended subsection (c)(4) effective June 30, 1981 (Supp. 81-3).

Renumbered from R4-26-157 effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-309. Complaints against Judicially Appointed Psychologists**

- A.** A.R.S. § 32-2081(B) applies when a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order even if the psychologist is not specifically named in the court order.
- B.** If a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order, the Board shall return the complaint to the complainant with instructions that the court issuing the order must find there is a substantial basis to refer the complaint for consideration by the Board.

**Historical Note**

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-310. Disciplinary Supervision; Practice Monitor**

- A.** If the Board determines, after a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10, after an informal interview under A.R.S. § 32-2081(K), or through an agreement with the Board, that to protect public health and safety and ensure a licensee’s ability to engage safely in the practice of psychology, it is necessary to require that the licensee practice psychology for a specified term under another licensee who provides supervision or service as a practice monitor, the

Board shall enter into an agreement with the licensee or issue an order regarding the disciplinary supervision or practice monitoring.

- B.** Payment between a licensee and supervisor or practice monitor.
1. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under the supervision of another licensee may pay the supervising licensee for the supervisory service;
  2. A licensed psychologist who provides supervisory service to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under supervision may accept payment for the supervisory service;
  3. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under a practice monitor may pay the practice monitor for the service provided; and
  4. A licensed psychologist who provides practice monitoring to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under a practice monitor may accept payment for the service provided.
- C.** A licensed psychologist who supervises or serves as a practice monitor for a licensed psychologist who has entered an agreement with the Board or been ordered by the Board to practice psychology under supervision or with a practice monitor is professionally responsible only for work specified in the agreement or order.

**Historical Note**

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**ARTICLE 4. BEHAVIOR ANALYSIS****R4-26-401. Definitions**

- A.** The definitions in A.R.S. § 32-2091 apply in this Article.
- B.** Additionally, in this Article:
1. “Accredited” means an institution of higher education:
    - a. In the U.S. is listed with the Council for Higher Education Accreditation,
    - b. In Canada is a member of the Universities Canada, and
    - c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
  2. “Advertising” means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
  3. “Applicant” means an individual who applies to the Board for an initial or renewal license.
  4. “BACB” means the Behavior Analyst Certification Board.
  5. “Confidential information” means:
    - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
    - b. A record that is classified as confidential by a statute or rule applicable to the Board;
    - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any infor-

## CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

- mation relating to a client's diagnosis, treatment, or personal family life; and
- d. The following regarding an applicant or licensee:
    - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
    - ii. Home address, telephone number, and e-mail address;
    - iii. Test scores;
    - iv. Date of birth;
    - v. Place of birth; and
    - vi. Social Security number.
  6. "Gross negligence" means an extreme departure from the ordinary standard of care.
  7. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
  8. "License period" means:
    - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
    - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
  9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
    - a. Nature of the alleged conduct,
    - b. Severity of the alleged conduct,
    - c. Recentness of the alleged conduct,
    - d. Actions taken by the applicant to remedy potential violations, and
    - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
  10. "Party" means the Board, an applicant, a licensee, or the state.
  11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
  12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
  13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
  14. "Renewal year" means:
    - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
    - b. Each even-numbered year for a licensee who holds an even-numbered license.
  15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section

amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-402. Fees and Charges**

- A. As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
  1. Application for an active license: \$350;
  2. Renewal of an active license: \$500;
  3. Renewal of an inactive license: \$85;
  4. Issuance of an initial license: \$500; and
  5. Reinstatement of expired license: \$200.
- B. As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
  1. Duplicate license: \$25;
  2. Duplicate renewal receipt: \$5;
  3. Copy of the Board's statutes and rules: \$5;
  4. Verification of a license: \$2;
  5. Audio recording of a Board meeting: \$10 per meeting;
  6. Electronic medium containing the name and address of all licensees: \$.05 per name;
  7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
  8. Customized electronic medium: \$.35 per name; and
  9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- C. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-403. Application for Initial License**

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its website, and provide the following information:
  1. Full name;
  2. Other names by which the applicant is or ever has been known;
  3. Home address and telephone number;
  4. Business name and address;
  5. Work telephone and fax numbers;
  6. E-mail address;
  7. Gender;
  8. Date of birth;
  9. Social Security number;
  10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
  11. Place of birth;
  12. A statement of whether the applicant:
    - a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
    - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
    - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;

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- d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
- e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
- f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
- g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntarily terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
- h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
- i. Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation;
- j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
- k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
- l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
- m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
- n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently; and
13. The applicant's signature attesting that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
  2. The application fee required under R4-26-402;
  3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
  4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
1. Verification the applicant passed the examination referenced in R4-26-404 submitted by the BACB;
  2. Verification of supervised experience that meets the standards specified in R4-26-404.2;
  3. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
  4. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
  5. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.
- Historical Note**  
Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).
- R4-26-404. Examination Requirement**  
To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB for Board Certified Behavior Analysts as part of its certification process.
- Historical Note**  
Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).
- R4-26-404.1. Education Requirement**
- A.** This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B.** To be licensed as a behavior analyst in Arizona, an individual shall have a master's degree or higher from an accredited institution of higher education in:
1. Behavior analysis, education, psychology, or another subject area related to behavior analysis acceptable to the Board; or
  2. A degree program in which the applicant completed a BACB-approved course sequence.
- Historical Note**  
New Section made by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).
- R4-26-404.2. Supervised Experience Requirement**
- A.** Application of this Section:
1. This Section does not apply to an individual who was certified by the BACB with at least 1500 hours of supervised experience before January 1, 2015; and
  2. This Section applies in part to an individual who was certified by the BACB with fewer than 1500 hours of supervised experience before January 1, 2015. To be licensed in Arizona, the individual shall complete additional hours of supervised experience to meet the 1500-hour requirement under A.R.S. § 32-2091.03 and ensure all hours of supervised experience obtained after December 31, 2014, meet the requirements of this Section.
- B.** To be licensed as a behavior analyst in Arizona, an individual shall have completed 1500 hours of supervised experience.

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The Board shall accept, for the purpose of licensure, hours of supervised experience obtained on or after January 1, 2015, that meet the following standards:

1. Supervised independent fieldwork. The supervisee shall be supervised at a frequency that meets the standards of the BACB at the time of supervision;
  2. Practicum. The supervisee shall:
    - a. Participate in a practicum in behavior analysis within a program approved by the BACB;
    - b. Achieve a passing grade in the practicum;
    - c. Obtain graduate-level academic credit for the practicum; and
    - d. Be supervised at a frequency that meets the standard of the BACB at the time of supervision;
  3. Intensive practicum. The supervisee shall:
    - a. Participate in an intensive practicum in behavior analysis within a program approved by the BACB;
    - b. Achieve a passing grade in the intensive practicum;
    - c. Obtain graduate-level academic credit for the intensive practicum; and
    - d. Be supervised at a frequency that meets the standards of the BACB at the time of supervision;
  4. Combination of experience categories. The supervisee may accrue hours of supervised experience in a single category or may combine any two or three categories listed in subsections (B)(1) through (3). However, the supervisee shall accrue supervised experience in only one category in each supervisory period; and
  5. For all categories of supervised experience, the supervisee shall accrue:
    - a. No fewer than 20 hours and no more than 130 hours, including time spent in supervision, each month; or
    - b. The number of hours that meets the standards of the BACB at the time of supervision.
- C. Standards for supervised experience.
1. Onset of supervised experience. The Board shall not accept, for the purpose of licensure, hours of supervised experience completed before attending courses required under R4-26-405. However, the Board shall accept hours of supervised experience completed concurrent with attending courses required under R4-26-405.
  2. Appropriate activities. The Board shall accept, for the purpose of licensure, hours of supervised experience that demonstrate participation in supervised experiences with various populations, at various sites, with multiple supervisors, and including all of the following activity areas:
    - a. Conducting assessments related to behavioral intervention;
    - b. Designing, implementing, and monitoring skill-acquisition and behavior-reduction programs;
    - c. Overseeing implementation of behavior-analytic programs by others;
    - d. Training, designing behavioral systems, and managing performance; and
    - e. Performing other activities directly related to behavior analysis such as attending planning meetings regarding the behavior analytic program, researching literature related to the program, and talking with others about the program.
  3. Appropriate clients. The Board shall accept, for the purpose of licensure, hours of supervised experience with appropriate clients.
    - a. An appropriate client is one for whom behavior-analytic services are suitable.
    - b. A client is not appropriate if:
      - i. The client is related to the supervisee,
      - ii. The client's primary caretaker is related to the supervisee, or
      - iii. The supervisee is the client's primary caretaker.
4. Supervisor qualifications. The Board shall accept, for the purpose of licensure, hours of supervised experience only if the supervisor:
    - a. Was licensed by the state in which the supervision occurred during the period of supervised experience; or
    - b. If licensure of behavior analysts was not available or not in effect in the state in which the supervision occurred or during the period of supervised experience, was certified as a behavior analyst by the BACB; and
    - c. Was not related to, subordinate to, or employed by the supervisee during the period of supervised experience. Employment does not include payment made to the supervisor by the supervisee for supervisory services.
  5. Nature of supervision. The Board shall accept, for the purpose of licensure, hours of supervised experience that are effective in improving and maintaining the behavior-analytic, professional, and ethical skills of the supervisee.
    - a. Effective supervision includes:
      - i. Developing performance expectations for the supervisee;
      - ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is preferred but use of web cameras, videotape, videoconferencing, or a similar means that provides synchronous observation is acceptable;
      - iii. Modeling technical, professional, and ethical behavior for the supervisee;
      - iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;
      - v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;
      - vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and
      - vii. Evaluating the effects of supervising the supervisee; and
    - b. Effective supervision may be conducted:
      - i. Individually for at least half of the total supervised hours in each supervisory period; and
      - ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.
  6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:
    - a. States the responsibilities of both the supervisor and supervisee;
    - b. Requires the supervisor to complete eight hours of supervision training provided by BACB;
    - c. Includes a description of appropriate activities and instructional objectives;
    - d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;

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- e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;
  - f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and
  - g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.
7. Documentation of supervision. If the Board determines documentation of supervision is needed to enable it to assess an applicant's qualifications, the applicant shall submit documentation of hours of supervised experience. When requested, the Board shall accept, for the purpose of licensure:
- a. Copies of the BACB Experience Verification Forms submitted by the applicant to the BACB when the applicant applied to the BACB for certification;
  - b. Other documentation of supervision that includes the same data elements contained in the BACB Experience Verification Form; or
  - c. If the applicant is unable to obtain documentation under subsection (C)(7)(a) or (C)(7)(b) or if the applicant disagrees with the total hours recorded on the documentation, the Board shall accept:
    - i. A copy of the plan required under subsection (C)(6),
    - ii. Copies of the documentation maintained under subsection (C)(7)(a) or (C)(7)(b), and
    - iii. Letters or other documentation from third parties who observed the supervisory relationship.
8. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through (7).

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).

**R4-26-405. Coursework Requirement**

- A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B. To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas:
  - 1. Ethical and professional conduct in behavior analysis: 45 hours;
  - 2. Concepts and principles of behavior analysis: 45 hours;
  - 3. Research methods in behavior analysis: 45 hours:
    - a. Measurement and data analysis: 25 hours; and
    - b. Experimental design: 20 hours;
  - 4. Applied behavior analysis: 105 hours:
    - a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;
    - b. Identification of the problem and assessment: 30 hours;
    - c. Intervention and behavior change considerations: 10 hours;
    - d. Behavior change systems: 10 hours; and
    - e. Implementation, management, and supervision: 10 hours; and
  - 5. Discretionary content related to behavior analysis: 30 hours.

- C. The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program approved by the BACB.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-406. Ethical Standard**

The Board incorporates by reference BACB Professional and Ethical Compliance Code for Behavior Analysts, January 1, 2016, published by the BACB and available for review at the Board office and online at www.BACB.com. The incorporated material includes no later editions or amendments.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-407. License by Reciprocity**

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual is licensed or certified as a behavior analyst in good standing and:

1. Obtained a graduate degree from an accredited institution of higher education in a subject area specified in R4-26-404.1;
2. Completed a minimum of 1,500 hours of supervised experience that meets the standards specified in R4-26-404.2;
3. Completed a minimum of 270 classroom hours of graduate-level instruction in the content areas listed in R4-26-405 or was certified as a behavior analyst by the BACB before January 1, 2015; and
4. Passed the examination referenced in R4-26-404.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Section amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).

**R4-26-408. License Renewal**

- A. Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B. The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C. To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website, and provide the following information:
  1. License number;
  2. Name;
  3. Other names by which the licensee is or ever has been known;
  4. Home address and telephone number;
  5. Business name and address;
  6. Work telephone and fax number;
  7. E-mail address;

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8. Date of birth;
  9. Social Security number;
  10. BACB certificate number, if applicable;
  11. A statement of whether the licensee:
    - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;
    - b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
    - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
    - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
    - e. Is currently a member of a professional association and if so, the name of the professional association;
    - f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
    - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
    - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
    - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
    - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
    - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
    - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
    - m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
      - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;
  12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
  13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and
  14. The licensee's signature attesting that the information provided is true in every respect.
- D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402;
  2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
  3. The Board's Mandatory Confidential Information form.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
  2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
  3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
  2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-409. Continuing Education Requirement**

- A.** A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.

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- B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis.
1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
  2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
  3. Self-study or correspondence course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
  4. Online course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
  5. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for each hour taught; for graduate courses taught, 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
  6. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;
  7. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and
  8. Attending a Board meeting: Three hours for attending a morning or afternoon session of a Board meeting and six hours for attending a full-day Board meeting.
- D. The number of hours of continuing education is limited as follows:
1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(5). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
  2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (6) and (7).
  3. No more than six of the required hours may be obtained under subsection (C)(8). Hours obtained under subsection (C)(8) may be used to complete the ethics requirement under subsection (A).
  4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
1. Name of the licensee;
  2. Title of the continuing education;
  3. Name of the continuing education provider;
  4. Date, time, and location of the continuing education; and
  5. Number of hours of continuing education obtained.
- F. A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.
- G. The Board may audit a licensee's compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.
- H. A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
  2. The Board shall not grant an extension longer than one year.
  3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.
  4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. § 32-2091.06(E).

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Section amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).

**R4-26-410. Voluntary Inactive Status**

- A. A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona,
  2. The behavior analyst is retired, or

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3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B. To place a license on inactive status, a licensee shall comply with R4-26-408.
- C. To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before the last day of the licensee's birth month during the licensee's renewal year.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-411. License Reinstatement**

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-412. Client Records**

- A. A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B. A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C. A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E. A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F. A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G. The provisions of this Section apply to all licensees including those on inactive status.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number**

- A. The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely commu-

nication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.

- B. A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-414. Complaints and Investigations**

- A. Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
  1. An individual licensed under this Article; or
  2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B. Complaint requirements. A complainant shall:
  1. Submit the complaint to the Board in writing; and
  2. Provide the following information:
    - a. Name and business address of licensee or other individual who is the subject of complaint;
    - b. Name and address of complainant;
    - c. Allegations constituting unprofessional conduct;
    - d. Details of the complaint with pertinent dates and activities;
    - e. Whether the complainant has contacted any other organization regarding the complaint; and
    - f. Whether the complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-415. Informal Interview**

- A. As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.
- B. The Board shall ensure that the written notice of informal interview contains the following information:
  1. The time, date, and place of the informal interview;
  2. An explanation of the informal nature of the proceedings;
  3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
  4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
  5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
  6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
  7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C. The Board shall ensure that an informal interview proceeds as follows:

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1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
2. Introduction of the Board members, staff, and Assistant Attorney General present;
3. Swearing in of the respondent, complainant, and witnesses;
4. Brief summary of the allegations and purpose of the informal interview;
5. Optional opening comment by the respondent and complainant;
6. Questioning of the respondent and witnesses by the Board;
7. Questioning of the complainant by the respondent through the Chair;
8. Optional additional comments by the respondent and complainant; and
9. Deliberation by the Board.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-416. Rehearing or Review of Decision**

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct of the Board, its staff, 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 penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
  7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** 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.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare 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.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-417. Licensing Time Frames**

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time frames:
  1. Initial license.
    - a. Overall time frame: 120 days,
    - b. Administrative completeness review time frame: 30 days, and
    - c. Substantive review time frame: 90 days; and
  2. Renewal license.
    - a. Overall time frame: 150 days,
    - b. Administrative completeness review time frame: 60 days, and
    - c. Substantive review time frame: 90 days.
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25% of the overall time frame.
- C.** The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F.** The substantive review time frame begins on the date of the Board's notice of administrative completeness.
- G.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H.** An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- I.** An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the

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time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.

- J.** Within the overall time frame listed in subsection (A), the Board shall:
1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
  2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K.** If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L.** If the Board denies a license, the Board shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
  2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
  3. The time for appealing the denial; and

4. The applicant's right to request an informal settlement conference.

- M.** If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

**R4-26-418. Mandatory Reporting Requirement**

- A.** As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B.** A list of reportable misdemeanors is available on the Board's website.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

As of March 18, 2020

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
  - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
  - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:
  - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
  - (b) Issues that the guardian agrees to specifically reserve to the individual.
10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

- (l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client or patient, a student or a supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any

psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2062. Board; qualifications; appointments; terms; compensation; immunity

A. The state board of psychologist examiners is established consisting of ten members appointed by the governor pursuant to section 38-211.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Seven members shall be licensed pursuant to this chapter, and three shall be public members who are not eligible for licensure. The board shall have at all times, except for the period when a vacancy exists, at least two members who are licensed as psychologists and who are full-time faculty members from universities in this state with a doctoral program in psychology that meets the requirements of section 32-2071, at least three members who are psychologists in professional practice and at least two members who are behavior analysts in professional practice and who are members of the committee on behavior analysts. The public members shall not have a substantial financial interest in the health care industry and shall not have a household member who is eligible for licensure under this chapter.

C. Each member shall serve for a term of five years beginning and ending on the third Monday in January.

D. A vacancy on the board occurring other than by the expiration of term shall be filled by appointment by the governor for the unexpired term as provided in subsection C of this section. The governor, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Board members shall receive compensation in the amount of one hundred dollars for each cumulative eight hours of actual service in the business of the board and reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

F. Members of the board and its employees, consultants and test examiners are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.
  2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
  3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
  4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.
  5. Adopt an official seal for attestation of licenses and other official papers and documents.
  6. Investigate charges of violations of this chapter and board rules and orders.
  7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.
  8. Annually elect from among its membership a chairman, a vice-chairman and a secretary, who serve at the pleasure of the board.
  9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.
  10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.
  11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.
  12. Adopt rules regarding the use of telepractice on or before June 30, 2016.
  13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to the licensing and regulation of behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.
- B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2064. Meetings; committees; quorum

A. The board shall hold regular quarterly meetings at a time and place determined by the chairman. The board shall hold special meetings the chairman determines necessary to carry out the functions of the board.

B. The chairman may establish committees from the board membership necessary to carry out the functions of the board. The board may establish committees of licensed psychologists to act as consultants to the board. Members of consultant committees are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

C. A majority of board members constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2065. Board of psychologist examiners fund; separate behavior analyst account

A. The board of psychologist examiners fund is established.

B. Except as provided in section 32-2081 and section 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety percent in the board of psychologist examiners fund.

C. All monies deposited in the board of psychologist examiners fund are subject to section 35-143.01.

D. All monies deposited in the board of psychologist examiners fund pursuant to section 32-2067 and any monies received pursuant to section 32-2063, subsection C for psychologist licensing and regulation must be used only for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter and may not be used for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter.

E. All monies deposited in the board of psychologist examiners fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation must be used only for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter and may not be used for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter.

F. The board shall establish a separate account in the fund for monies transferred to the fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation.

32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.
2. The names and addresses of all licensees.
3. The current board rules.
4. A copy of this chapter.
5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

**32-2067. Fees; alternative payment methods**

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.
2. Two hundred dollars for an application for a temporary license to practice psychology.
3. Two hundred fifty dollars for reapplication for an active license.
4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.
5. Fifty dollars for a duplicate license.
6. Five hundred dollars for biennial renewal of an active license.
7. Eighty-five dollars for biennial renewal of an inactive license.
8. Three hundred dollars for the reinstatement of an active or inactive license.
9. Three hundred fifty dollars for any additional examination.
10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.
11. Five dollars for the sale of a duplicate renewal receipt.
12. Five dollars for the sale of a copy of the board's statutes and rules.

13. Two dollars for verification of a license.
  14. Ten dollars for the sale of each audiotape of board meetings.
  15. Five cents per name for the sale of computerized discs that contain the name of each licensee.
  16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.
  17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.
  18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.
- B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.
- C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.
- D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.
- E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

**32-2071. Qualifications of applicant; education; training**

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:
  - (a) The New England association of schools and colleges.
  - (b) The middle states association of colleges and schools.
  - (c) The north central association of colleges and schools.
  - (d) The northwest association of schools and colleges.
  - (e) The southern association of colleges and schools.

(f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

(a) Scientific and professional ethics and standards in psychology.

(b) Research, which may include design, methodology, statistics and psychometrics.

(c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.

(d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.

(e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.

(f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and the administration, scoring and interpretation of psychological test batteries for the diagnosis of cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions for the treatment of mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.

2. Additional internship hours as described in subsection F of this section.

3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.

2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must assure the quality, breadth and depth of training experience through the specification of goals and objectives of the supervised preinternship professional experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

- (a) At least fifty per cent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment,

assessment, interviews, report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five per cent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) After September 1, 2013, at least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty per cent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty per cent shall be through in-person group supervision. At least seventy-five per cent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five per cent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to assure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.

3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.

4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.

5. A minimum of twenty-five per cent of a trainee's supervised professional experience hours is in direct client or patient contact.

6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.

7. The training program includes interaction with other psychology trainees.

8. Trainees have a title that designates their trainee status.

9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.

2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty per cent of the supervisee's time shall be in direct contact with clients or patients. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine if an applicant satisfies the requirements of subsection A relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a

program or professional school of psychology that has either an established American psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.
2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.
3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

#### 32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.
2. Has passed any examination or examinations required by section 32-2072.
3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.
4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.
5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.
6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved

before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.
2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.
3. Is a diplomate of the American board of professional psychology.

#### 32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.
2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.

2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. Beginning January 1, 2015, the board may issue a temporary license to an individual who submits an application for temporary licensure and who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months from the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term inactive to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure

examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, beginning May 1, 2017, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.

2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

32-2075. Exemptions from licensure

A. This chapter does not limit the activities, services and use of a title by the following:

1. A school psychologist employed in a common school, high school or charter school setting and certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
  2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and is supervised by a doctorate position employee who is licensed as a psychologist, including a temporary licensee.
  3. A student of psychology pursuing an official course of graduate study at an educational institution accredited as provided in section 32-2071, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
  4. A person who resides outside of this state and who is currently licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada if the activities and services conducted in this state are within the psychologist's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this chapter and the client or patient, public or consumer is informed of the limited nature of these activities and services and that the psychologist is not licensed in this state. A person may exceed the twenty-day limitation requirement of this paragraph to assist in public service that is related to a disaster as acknowledged by the board.
  5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state or other institutional services if the services are a part of the faculty duties of that person's salaried position, with the exception of faculty providing direct services or faculty providing supervision of students providing direct services, and the person has received a doctoral degree as provided in section 32-2071.
  6. A supervisee who is pursuing a supervised professional experience pursuant to section 32-2071, subsection G if the services or activities are provided under the direct supervision of a licensed psychologist who is licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience, clients or patients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.
- B. This chapter does not prevent a member of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a psychologist.

### 32-2076. Unauthorized practice of medicine

This chapter does not authorize a person to engage in any manner in the practice of medicine pursuant to chapter 13, 17 or 29 of this title, except that a person licensed as provided in this chapter may diagnose, treat and correct human conditions ordinarily within the scope of the practice of a psychologist.

### 32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to

the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.

B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days of receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. The complaint screening committee shall review all complaints, and based on the information provided pursuant to subsection A or F of this section may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, it may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for a period not to exceed twelve months, restriction of the license or restitution of fees to a client or patient resulting from violations of this chapter. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

L. If the board finds that the information provided pursuant to subsection A or F of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

M. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

N. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

O. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

P. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client or patient.

Q. Except as provided in section 41-1092.08, subsection H or a decision made pursuant to subsection C of this section, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

R. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services, it shall inform the appropriate criminal justice agency.

S. If the board finds that it can take rehabilitative or disciplinary action at any time during the investigative or disciplinary process, it may enter into a consent agreement with the psychologist to limit or restrict the psychologist's practice or to rehabilitate the psychologist in order to protect the public and ensure the psychologist's ability to safely engage in the practice of psychology. The board may also require the psychologist to successfully complete a board approved rehabilitative, retraining or assessment program at the psychologist's expense.

**32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal**

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

### 32-2083. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person not licensed pursuant to this chapter from practicing psychology.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of psychology, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of psychology without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this chapter.

### 32-2084. Violations; classification

A. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to engage in the practice of psychology.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice psychology pursuant to this chapter by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice psychology.

C. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to:

1. Use the designation "psychology", "psychological" or "psychologist".
  2. Use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice psychology in this state.
- D. It is a class 2 misdemeanor for a person not licensed or not exempt from licensure pursuant to this chapter to use the designation "psychotherapist" or other derivation of the root word "psycho".

#### 32-2085. Confidential communications

- A. The confidential relations and communication between a client or patient and a psychologist licensed pursuant to this chapter, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client or patient waives the psychologist-client privilege in writing or in court testimony, a psychologist shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the psychologist's practice. The psychologist shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law.
- B. The psychologist shall ensure that client or patient records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the psychologist.

#### 32-2086. Treatment and rehabilitation program

- A. The board may establish a confidential program for the treatment and rehabilitation of psychologists who are impaired. The treatment and rehabilitation may include education, intervention, therapeutic treatment and posttreatment monitoring and support. The licensee is responsible for the costs associated with the treatment and rehabilitation, including monitoring.
- B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:
1. Periodic reports to the board regarding treatment program activity.
  2. Release to the board on demand of all treatment records.
  3. Quarterly reports to the board regarding each psychologist's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
  4. Immediate reporting to the board of the name of an impaired psychologist whom the treating organization believes to be a danger to the public or to the psychologist.
  5. Reports to the board, as soon as possible, of the name of a psychologist who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.
- C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-2067 for the operation of the program established by this section.

D. A psychologist who is impaired and who does not agree to enter into a stipulated order with the board shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a psychologist who has been placed on a probation order or who has entered into a stipulation order pursuant to this section is not impaired by alcohol or illegal substances after that order is no longer in effect, the board or its designee may require the psychologist to submit to bodily fluid examinations and other examinations known to detect the presence of alcohol or illegal substances at any time within the five consecutive years following termination of the probationary or stipulated order.

F. A psychologist who is impaired by alcohol or illegal substances and who was under a board stipulation or probationary order that is no longer in effect must ask the board to place the psychologist's license on inactive status with cause. If the psychologist fails to do this, the board shall summarily suspend the license pursuant to section 32-2081. In order to reactivate the license the psychologist must successfully complete a board approved long-term care residential treatment program, an inpatient hospital treatment program or an intensive outpatient treatment program and shall meet the requirements of section 32-2074. After the psychologist completes treatment the board shall determine if it should reactivate the license without restrictions or refer the matter to a formal hearing for the purpose of suspending or revoking the license or to place the psychologist on probation with restrictions necessary to ensure the public's safety.

G. The board may revoke the license of a psychologist if that psychologist is impaired by alcohol or illegal substances and was previously placed on probation pursuant to subsection F of this section. If the licensee is no longer on probation, the board may accept the surrender of the license if the psychologist admits in writing to being impaired by alcohol or illegal substances.

H. An evaluator, treatment provider, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a psychologist who is attending the program pursuant to board action.

### 32-2087. Psychology interjurisdictional compact

#### 32-2087.01. Participation in compact as condition of employment; prohibition

An employer may not require a psychologist to seek licensure through the psychology interjurisdictional compact enacted by section 32-2087 as a condition of initial or continued employment as a psychologist in this state. An employer may require that a psychologist obtain and maintain a license to practice psychology in multiple states, if the psychologist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

#### 32-2087.02. Open meeting requirements

If a meeting, or a portion of a meeting, of the psychology interjurisdictional compact commission is closed pursuant to section 32-2087, article X, subsection B, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

#### 32-2087.03. State board of psychologist examiners; notice of commission actions

The state board of psychologist examiners, within thirty days after a psychology interjurisdictional compact commission action, shall post on the board's public website notice of any commission action that may affect a psychologist's license.

### 32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
  - (a) A person or entity that receives behavior analysis services.
  - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
  - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.
8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain

practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.

11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.

12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.

(e) Gross negligence in the practice of a behavior analyst.

(f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.

(i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

(l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.

- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client, student or supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

### 32-2091.01. Fees

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

### 32-2091.02. Qualifications of applicant

Beginning January 1, 2011, a person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.

7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

#### 32-2091.03. Educational and training standards for licensure

An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that the number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience or independent fieldwork, university practicum or intensive university practicum. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

#### 32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.

4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.

5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction, if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Beginning May 1, 2017, a person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

### 32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. The committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or C of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or C of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or C of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, it may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or C of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

#### 32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

### 32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

### 32-2091.12. Violations; classification

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

### 32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

#### 32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

#### 32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. Committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

**DEPARTMENT OF CHILD SAFETY (F20-0503)**

Title 21, Chapter 5, Article 1, Interstate Compact on the Placement of Children



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT:** Department of Child Safety  
Title 21, Chapter 5, Article 1

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This Five-Year-Review Report from the Department of Child Safety relates to rules in Title 21, Chapter 5, Article 1 regarding Interstate Compact on the Placement of Children (ICPC). ICPC is a contract between the fifty states, including the District of Columbia, and the Virgin Islands, that provides the standard national procedures to ensure suitable placement and supervision for children placed across state lines.

This is the first 5YRR on these rules. The rules were created by final exempt rulemaking, and became effective January 2, 2016.

### **Proposed Action**

The Department is not proposing a course of action on these rules.

#### **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 Interstate Compact on the Placement of Children (ICPC) is a contract between and among the 50 states, District of Columbia, and the Virgin Islands, which provides standard national procedures to ensure suitable placement and supervision for children placed across state lines. During State Fiscal Year 2018 there were approximately 2700 children served by the Department's ICPC Program. Approximately 55% of the children are children who leave Arizona and the other 45% are children who are coming to Arizona from another state.

Funding for Arizona's ICPC Program is approximately \$2.4 million annually and funding is from both state General Fund and Federal Funds. There is an annual fee to the state of Arizona of \$2,000 to participate in the national ICPC and an additional \$25,000 to participate in the national electronic system known as the "National Electronic Interstate Compact Enterprise (NEICE). The electronic system allows for a quick and secure exchange of data and documents between states.

Stakeholders are the Department, children in out-of-home care or adoptive children who need to be placed across state line for permanency or placed in another state in a residential treatment facility, and the other compact states.

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

The Department believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. Any costs related to these rules are associated with running and monitoring the operations of the program. It is the Department's belief that any costs associated with the rules are offset by the greater benefit of partnering with other states in the placement of children outside their state's jurisdiction and ensuring the children's safety and protection.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department indicates the rules are clear, concise, understandable, consistent with other rules and statutes, and effective.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal law, 42 U.S.C 622, 671, 675, and 5113.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit or license.

9. **Conclusion**

As mentioned above, the Department is not proposing any changes to the rules. Council staff recommends approval of this report.



**ARIZONA**  
**DEPARTMENT**  
*of* **CHILD SAFETY**

Mike Faust, Director  
Douglas A. Ducey, Governor

**February 28, 2020**

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

Ms. Nicole Sornsins 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 5,  
Article 1, Five Year Review Report**

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 5, Article 1 which is due on February 29, 2020.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development and Policy Specialist, at 602-255-2569 or [angelica.trevino@azdcs.gov](mailto:angelica.trevino@azdcs.gov) or Magdalena Jorquez, Senior Legislative Counsel at 602-255-2527 or [magdalena.jorquez@azdcs.gov](mailto:magdalena.jorquez@azdcs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Faust", with a long horizontal line extending to the right.

Mike Faust  
Director

Enclosure

**ARIZONA DEPARTMENT OF CHILD SAFETY**

**Five-Year-Review Report**

**Title 21. Child Safety**

**Chapter 5. Department of Child Safety - Permanency and Support services**

**Article 1. Interstate Compact on the Placement of Children**

**February 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. §§ 8-548 through 8-548.06, and A.R.S. § 8-453 (A)(9)(a)

**2. The objective of each rule:**

Rule	Objective
R21-5-101. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Article.
R21-5-102. Authority	The objective of this rule is to provide the statutory authority for the rules in this Article.
R21-5-103. Conditions of Placement	The objective of this rule is to clearly state who and when someone can place a child in another Compact State.
R21-5-104. Financial Responsibility	The objective of this rule is to establish who is financially responsible for a child sent to another state.
R21-5-105. Applicability	The objective of this rule is to indicate when ICPC applies and when ICPC does not apply.
R21-5-106. Placement Approval	The objective of this rule is to establish the requirement for approval from both states before placing children across state lines.
R21-5-107. Operations	The objective of this rule is to establish that services are provided in accordance with federal and state law and indicate that interpreters will be made available.

**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 rules in Title 21, Chapter 5, Article 1 cover the Interstate Compact on the Placement of Children (ICPC). ICPC is a contract between and among the 50 states, District of Columbia, and the Virgin Islands, which provides standard national procedures to ensure suitable placement and supervision for children placed across state lines. Additionally, ICPC ensures that the individual or entity placing the child remains legally and financially responsible for the child following placement.

Four types of placements are covered:

1. Placements preliminary to an adoption;
2. Placements into foster care; including foster homes, group homes, and residential treatment facilities;
3. Placement with parents and relatives with court oversight; and
4. Placements of adjudicated delinquents into institutions in other states.

The persons directly affected by, bear the costs of, or directly benefit from the rules in this Article include children in out-of-home care or adoptive children who need to be placed across state line for permanency or placed in another state in a residential treatment facility, DCS, and other compact states. When children in foster care, adoptive children, and children requiring placement in a residential treatment facilities require placement in a state other than their state jurisdiction, placement must be approved by the ICPC.

During State Fiscal Year 2018, there were approximately 2700 children served by the Department’s ICPC Program. Approximately 55% of the children are children who leave Arizona and the other 45% of the children who are coming to Arizona from another state.

DCS ICPC Office

Services include foster and adoptive home studies and the supervision of the placements approved by ICPC for children residing in a state other than their state of jurisdiction. ICPC also approves the placement of children in residential treatment facilities outside of the child’s state of jurisdiction.

The ICPC Office also facilitates services and communication with the Interstate Compact for Juveniles (ICJ). When a child is in DCS care due to runaway status from another state, DCS must coordinate with the Interstate Compact for Juveniles (ICJ) in order to return the child to their home state.

In addition, the ICPC Office facilitates a connection to International Social Services, which coordinates the placement of an Arizona child in another country.

There are five (5) FTEs (Full-Time Employees) in the ICPC Office. This includes the ICPC Administrator, two (2) ICPC Coordinators, and two (2) administrative assistants. In addition, DCS has three (3) statewide contracts in place with agencies to conduct home studies and provide supervision for children placed in Arizona from another state. This office is responsible for the following functions:

- Interpret and provide support to internal and external stakeholders regarding the Interstate Compact and Placement of Children (ICPC).
- Develop policies, procedures, forms and booklets relating to compliance with ICPC regulations.
- Evaluate and make determinations on ICPC applications for placements to/from Arizona of foster children or adoptive children.
- Ensure compliance with ICPC law through monitoring case actions and progress.
- Communicate and problem solve with other state ICPC administrations.
- Provide technical assistance and educational training to attorneys, private child welfare and adoption agency staff, and DCS staff.
- Ensures that DCS and contracted vendors follow the ICPC protocols.
- Coordinates, develops, and identifies training activities for DCS staff.

#### Funding

Funding for Arizona’s ICPC Program is approximately \$2.4 million annually. The funding source is both state General Fund and Federal funds. This funding includes ICPC operations (staffing, supplies, overhead, etc.) and contracted services. There are no fees charged between Compact States. However, there is an annual fee to the state of Arizona of \$2,000.00 to participate in the national ICPC and an additional \$25,000.00 to participate with the national electronic system known as the “National Electronic Interstate Compact Enterprise (NEICE)”. This electronic system allows for a quick and secure exchange of data and documents between states.

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 5 Article 1. The rules in this Article were made by final exempt rulemaking, published in 21 A.A.R. 2979 on November 27, 2015 and became effective on January 2, 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. Any costs related to the implementation of these rules are associated with running and monitoring the operations of the program. It is the Department's belief that any costs associated with the rules are offset by the greater benefit of partnering with other states in the placement of children outside their state's jurisdiction and ensuring the children's safety and protection. The purpose of ICPC is to place children with relatives, kin, or caregivers who are safe, suitable and able to meet the child's needs.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

Federal laws 42 U.S.C. 622, U.S.C. 671, U.S.C 675, and U.S.C. 5113 apply to the rules of this Article. The rules in this Article 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. The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department has reviewed the current rules and does not plan any rulemaking activity for these rules at this time.

# Arizona Administrative CODE

21 A.A.C. 5 Supp. 19-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2019 through September 30, 2019

## Title 21



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 21. CHILD SAFETY

### CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

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#### Questions about these rules? Contact:

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Address: 3003 N. Central Ave.  
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**Web site:** <https://dcs.az.gov/about/dcs-rules-rulemaking>

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#### The release of this Chapter in Supp. 19-3 replaces Supp. 19-1, 1-23 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

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

### THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

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

### SESSION LAW REFERENCES

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

### EXEMPTIONS FROM THE APA

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

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

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

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

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

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

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



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

TITLE 21. CHILD SAFETY

CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 5 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. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

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## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

**ARTICLE 1. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****R21-5-101. Definitions**

The definitions contained in A.R.S. § 8-548 and the following definitions apply in this Article:

1. "Child" means any person less than the age of 18 years.
2. "Compact" or "ICPC" means the Interstate Compact on the Placement of Children.
3. "Compact Administrator" means the same as A.R.S. § 8-548.
4. "Compact State" means a state that is a member of the Interstate Compact on the Placement of Children.
5. "Department" or "DCS" means the Arizona Department of Child Safety.
6. "Interstate placement" means any movement of a child from one state to another state for the purpose of establishing a suitable living environment and providing necessary care.
7. "Intra-state placement" means the placement of a child within a state by an agency of that state.
8. "Placement" means the same as in A.R.S. § 8-548.
9. "Receiving state" means the same as in A.R.S. § 8-548.
10. "Sending agency" means the same as in A.R.S. § 8-548.
11. "Sending state" means the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits, or enables the child to be sent to another state.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-102. Authority**

The ICPC is governed by A.R.S. §§ 8-548 through 8-548.06 and the ICPC regulations. ICPC regulations are posted on the Association of Administrators of the Interstate Compact on the Placement of Children website. These regulations supplement those authorities and must be read in conjunction with them.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-103. Conditions of Placement**

No person, court, or public or private agency in a Compact State shall place a child in another Compact State until the Compact Administrator in the receiving state has notified the Compact Administrator in the sending state, on a prescribed form, that such placement does not appear to be contrary to the interests of the child and does not violate any applicable laws of the receiving state.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-104. Financial Responsibility**

The sending person, court, or public or private agency shall be held financially responsible for:

1. Sending the child to the receiving state;
2. Returning the child to the sending state; and
3. Treatment of the child during the period of placement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-105. Applicability**

A. Except as listed in subsection B, the ICPC applies to the placement of:

1. Children in another Compact State by an agency, court or person, which has care or custody of the children.
  2. Foreign-born children who are brought under the jurisdiction of a Compact State by an international child placing agency.
- B. In addition to the children listed in statute that are not subject to ICPC, the ICPC does not apply:
1. When a child is placed in an institution caring for the mentally ill, mentally impaired, epileptic, or in any institution primarily educational in character or in any hospital or other medical facility.
  2. To the placement of children into and out of the United States when the other jurisdiction involved is a foreign country.
  3. When a sending court or agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agrees to conduct the courtesy check without invoking the protection of the ICPC home study process. This does not prohibit a sending state from requesting an ICPC.
  4. The Compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-106. Placement Approval**

Sending and receiving states must obtain approval from the Compact Administrator in both the sending and receiving states prior to the placement of a child in another Compact State.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-107. Operations**

In providing services provided under this Article, the sending and the receiving state shall:

1. Maintain all information required by state and federal law.
2. Comply with all federal and their respective state laws and regulations regarding the disclosure and use of confidential health and personal information.
3. Comply with all federal and their respective state non-discrimination laws and regulations.
4. Ensure that interpreters, including assistance for the visually or hearing impaired, are available to those receiving services at no cost.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS****EMERGENCY RULEMAKING****R21-5-201. Definitions**

The following definitions apply to this Article:

1. "Active participation" means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

2. "Aftercare services" means assistance and support available to eligible, former foster youth living in Arizona after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
3. "Age of majority" means that a person is at least 18 years old.
4. "Approved living arrangement" means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
5. "Arizona Young Adult Program" means a group of programs and services designed to assist eligible youth to make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
6. "Child placing agency" means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
7. "Child Welfare Agency" means the same as in A.R.S. § 8-501.
8. "Child Safety Worker" means the same as in A.R.S. § 8-801.
9. "Custody of the Department" means that the foster youth:
  - a. Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
  - b. Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth's 19th birthday.
10. "Department" or "DCS" means the Arizona Department of Child Safety.
11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
12. "Employment" means:
  - a. Paid employment;
  - b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
  - c. Volunteer positions;
  - d. Job-shadowing;
  - e. Internship; or
  - f. Other paid or unpaid employment-related activities.
13. "Extraordinary purchase" means an expenditure by an eligible youth that impedes an eligible youth's ability to meet the financial obligations outlined in the eligible youth's budget.
14. "Foster youth" means a person in the custody of the Department.
15. "Full-time student" means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
16. "Independent Living Program" means the program authorized by A.R.S. § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
17. "Independent Living Services" or "IL Services" means an array of assistance and support services, including those provided under the Independent Living Program, that the Department provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
18. "Independent Living Subsidy" or "IL Subsidy" means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
19. "Individual case plan" means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
  - a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;
  - b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
  - c. Daily living skills;
  - d. Secondary and postsecondary education and training;
  - e. Employment and career planning;
  - f. Physical health, including reproductive health;
  - g. Life care planning;
  - h. Emotional health;
  - i. Mental health;
  - j. Spiritual or faith needs;
  - k. Interpersonal relationships; and
  - l. Age-appropriate extra-curricular, enrichment, and social activities.
20. "Individual service plan" means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:
  - a. Financial,
  - b. Housing,
  - c. Counseling,
  - d. Employment,
  - e. Education, and
  - f. Other appropriate support and services.
21. "Life skills assessment" means a measure of an eligible youth's ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.
22. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.
23. "Misuse of funds" means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

- and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or service plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.
24. “Natural supports” means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person’s lifetime.
25. “Out-of-home care” means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.
26. “Personal Crisis” means an unexpected event or series of events in an eligible youth’s life that prevents or impedes participation in scheduled services or activities.
27. “Residential group care facility” means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
28. “Responsible agency staff” means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
29. “Service team members” means the eligible youth, the youth’s attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff, and other adults involved with the youth or supporting the youth’s activities or employment.
30. “Substantial non-compliance” means an eligible youth’s:
- Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
  - Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department’s ability to provide services and supervision or to document individual case plan or service plan progress;
  - Persistent misuse of funds provided to support individual case plan or service plan goals; or
  - For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.
31. “Transitional Independent Living Program” or “TIL Program” means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.
32. “Transitional Independent Living Services” or “TIL Services” means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.
33. “Validated assessment tool” means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.
34. “Work day” means Monday through Friday, excluding Arizona state holidays.
35. “Young Adult Transitional Insurance” means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHC-CCS) for Medicaid eligible youth who have reached the age of majority in foster care.

**Historical Note**

Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1).  
Emergency amendments renewed at 25 A.A.R. 2485, for an additional 180 days effective September 18, 2019 (Supp. 19-3).

**R21-5-201. Definitions**

The following definitions apply to this Article:

- “Active participation” means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.
- “Aftercare services” means assistance and support available to eligible, former foster youth living in Arizona after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
- “Age of majority” means that a person is at least 18 years old.
- “Approved living arrangement” means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
- “Arizona Young Adult Program” means a group of programs and services designed to assist eligible youth to make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
- “Child placing agency” means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
- “Child Welfare Agency” means the same as in A.R.S. § 8-501.
- “Child Safety Worker” means the same as in A.R.S. § 8-801.
- “Custody of the Department” means that the foster youth:
  - Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
  - Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth’s 18th birthday.

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10. "Department" or "DCS" means the Arizona Department of Child Safety.
11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
12. "Employment" means:
  - a. Paid employment;
  - b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
  - c. Volunteer positions;
  - d. Job-shadowing;
  - e. Internship; or
  - f. Other paid or unpaid employment-related activities.
13. "Extraordinary purchase" means an expenditure by an eligible youth that impedes an eligible youth's ability to meet the financial obligations outlined in the eligible youth's budget.
14. "Foster youth" means a person in the custody of the Department.
15. "Full-time student" means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
16. "Independent Living Program" means the program authorized by A.R.S. § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
17. "Independent Living Services" or "IL Services" means an array of assistance and support services, including those provided under the Independent Living Program, that the Department provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
18. "Independent Living Subsidy" or "IL Subsidy" means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
19. "Individual case plan" means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
  - a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;
  - b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
  - c. Daily living skills;
  - d. Secondary and postsecondary education and training;
  - e. Employment and career planning;
  - f. Physical health, including reproductive health;
  - g. Life care planning;
  - h. Emotional health;
  - i. Mental health;
  - j. Spiritual or faith needs;
  - k. Interpersonal relationships; and
20. "Individual service plan" means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:
  - a. Financial,
  - b. Housing,
  - c. Counseling,
  - d. Employment,
  - e. Education, and
  - f. Other appropriate support and services.
21. "Life skills assessment" means a measure of an eligible youth's ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.
22. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.
23. "Misuse of funds" means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or service plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.
24. "Natural supports" means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person's lifetime.
25. "Out-of-home care" means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.
26. "Personal Crisis" means an unexpected event or series of events in an eligible youth's life that prevents or impedes participation in scheduled services or activities.
27. "Residential group care facility" means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
28. "Responsible agency staff" means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
29. "Service team members" means the eligible youth, the youth's attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff,

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and other adults involved with the youth or supporting the youth's activities or employment.

30. "Substantial non-compliance" means an eligible youth's:
- Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
  - Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department's ability to provide services and supervision or to document individual case plan or service plan progress;
  - Persistent misuse of funds provided to support individual case plan or service plan goals; or
  - For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.
31. "Transitional Independent Living Program" or "TIL Program" means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.
32. "Transitional Independent Living Services" or "TIL Services" means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.
33. "Validated assessment tool" means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.
34. "Work day" means Monday through Friday, excluding Arizona state holidays.
35. "Young Adult Transitional Insurance" means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHCCCS) for Medicaid eligible youth who have reached the age of majority in foster care.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-202. Provision of Services**

- A.** The Department shall provide services and stipends for the IL Services, IL Subsidy, and TIL services to eligible youth in a manner that is fair and equitable.
- B.** The Department shall provide Independent Living Services to eligible foster youth based on needs identified by the eligible foster youth, by service team recommendations, or the findings of a life skills assessment. The services shall address needs identified in the eligible foster youth's individual case plan and may include one or more of the following, depending on the individual case plan goals:
- Information and assistance to create and maintain a network of natural supports;
  - Independent living skills training;
  - Program incentives;
  - Information and assistance in life care and health care planning, including enrollment in a health plan;

- Educational, career, and vocational planning;
- Financial assistance for post-secondary education and training;
- Out-of-home care for foster youth 18 through 20 years of age; or
- Aftercare services through the Transitional Independent Living Program.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-203. Denial of Services**

The Department shall deny services if a person does not meet the eligibility requirements of A.R.S. §§ 8-806, 8-521, 8-521.01, and R21-5-204.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-204. Eligibility**

- A.** Independent Living Services. In order to be eligible for IL Services a person shall:
- Be at least 16 years of age and less than 21 years of age;
  - Be in the custody of the Department or tribal child welfare agency;
  - Reside in out-of-home care;
  - Be referred by the eligible youth's assigned Child Safety Worker, other Department staff, or a tribal social services representative; and
  - Be a resident of Arizona if 18, 19, or 20 years of age.
- B.** Independent Living Subsidy.
- In order to be eligible for the IL Subsidy, a person shall:
    - Be at least 17 years of age, in the custody of the Department, and employed or a full-time student.
    - With the assistance of the responsible agency staff, complete the Independent Living Subsidy Agreement or other approved forms designated by the Department.
  - Conditions for approval and continuation in the Independent Living Subsidy Program include:
    - Active participation in activities outlined in the individual case plan;
    - Adherence to the terms of the IL Subsidy Agreement, including:
      - Communication with the Child Safety Worker;
      - Maintenance of a Department-approved living arrangement, including approval of a roommate, except those assigned by school or work; and
      - Participation in scheduled meetings to review progress and update the individual case plan and IL Subsidy Agreement.
  - Eligible youth 18, 19, and 20 years of age who are temporarily residing out of state for the purpose of education or vocational training, and who maintain Arizona residency, may receive the Independent Living Subsidy under the same conditions as above.
- C.** Transitional Independent Living Program. Under A.R.S. § 8-521.01, in order to be eligible for the Transitional Independent Living Program, a person must be less than 21 years of age and have been in out-of-home care and in the custody of the Department, a licensed residential group care facility, or a tribal child welfare agency while 16, 17, or 18 years of age. Persons who were in another state's child welfare agency under the same conditions are also eligible.

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**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**EMERGENCY RULEMAKING****R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age**

- A. The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department, and was either in out-of-home care or in secure care, as defined by A.R.S. § 8-201(31), through a delinquency action, when the foster youth:
1. Requests out-of-home care;
  2. Has residency in the state of Arizona;
  3. Participates in developing an individual case plan agreement for out-of-home care; and
  4. Demonstrates acceptance of personal responsibility for his or her part of the agreement through active participation in the individual case plan.
- B. The foster youth, Child Safety Worker, and involved service team members shall develop the individual case plan for out-of-home care:
1. Within the 90-day period prior to the foster youth's 18th birthday for foster youth continuing in out-of-home care past 18 years of age;
  2. Within ten work days for foster youth who enter out-of-home care during the 90-day period prior to the foster youth's 18th birthday; and
  3. For eligible youth re-entering foster care at 18 years of age or older, within seven work days of the eligible youth's return to Department care and supervision.
- C. The individual case plan shall outline the services and supports to be provided under R21-5-202(B) and include at least one of the following activities:
1. Completion of secondary education or a program leading to an equivalent credential;
  2. Enrollment in an institution that provides post-secondary education or vocational education;
  3. Participation in a program or activity designed to promote or remove barriers to employment; or
  4. Employment of at least 80 hours per month.
- D. Foster youth participating in out-of-home care shall demonstrate acceptance of personal responsibility by actively participating in an individual case plan, unless prevented by a documented behavioral health or medical condition, or other personal crisis or life event, such as pregnancy, birth, necessary maternity leave as determined by a medical professional, adoption, or guardianship of a child.
- E. The Child Safety Worker shall support the foster youth to address any documented condition, crisis, or life event listed in subsection (D), by:
1. Facilitating a youth led discussion that includes a review of the supports and services available as intervention strategies, to assist in resolving the condition, crisis, or concern;
  2. Documenting the foster youth's preferred intervention strategy for addressing the condition, crisis, or concern; and
  3. Expediently providing or otherwise arranging the preferred intervention strategy.

**Historical Note**

Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1).  
Emergency amendments renewed at 25 A.A.R. 2485, for

an additional 180 days effective September 18, 2019 (Supp. 19-3).

**R21-5-205. Services for Foster Youth 18 through 20 Years of Age in Out-of-home Care**

- A. The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department and in out-of-home care, when the foster youth:
1. Requests out-of-home care;
  2. Has residency in the state of Arizona;
  3. Participates in developing an individual case plan agreement for out-of-home care; and
  4. Demonstrates acceptance of personal responsibility for his or her part of the agreement through active participation in the individual case plan.
- B. The foster youth, Child Safety Worker, and involved service team members shall develop the individual case plan for out-of-home care:
1. Within the 90-day period prior to the foster youth's 18th birthday for foster youth continuing in out-of-home care past 18 years of age;
  2. Within ten work days for foster youth who enter out-of-home care during the 90-day period prior to the foster youth's 18th birthday; and
  3. For eligible youth re-entering foster care at 18 years of age or older, within seven work days of the eligible youth's return to Department care and supervision.
- C. The individual case plan shall outline the services and supports to be provided under R21-5-202(B) and include at least one of the following activities:
1. Completion of secondary education or a program leading to an equivalent credential;
  2. Enrollment in an institution that provides post-secondary education or vocational education;
  3. Participation in a program or activity designed to promote or remove barriers to employment; or
  4. Employment of at least 80 hours per month.
- D. Foster youth participating in out-of-home care shall demonstrate acceptance of personal responsibility by actively participating in an individual case plan, unless prevented by a documented behavioral health or medical condition, or other personal crisis or life event, such as pregnancy, birth, necessary maternity leave as determined by a medical professional, adoption, or guardianship of a child.
- E. The Child Safety Worker shall support the foster youth to address any documented condition, crisis, or life event listed in subsection (D), by:
1. Facilitating a youth led discussion that includes a review of the supports and services available as intervention strategies, to assist in resolving the condition, crisis, or concern;
  2. Documenting the foster youth's preferred intervention strategy for addressing the condition, crisis, or concern; and
  3. Expediently providing or otherwise arranging the preferred intervention strategy.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-206. Transitional Independent Living Program**

- A. The Transitional Independent Living Program provides services to eligible youth, under A.R.S. § 8-521.01 that complements their own efforts toward becoming self-sufficient. The Department may provide the following assistance, depending on individual service plan goals:

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1. Financial,
  2. Housing,
  3. Counseling,
  4. Employment,
  5. Education, and
  6. Other appropriate support and services.
- B.** The eligible youth requesting services through the Transitional Independent Living Program shall provide the following information to the responsible agency staff:
1. Identifying information including:
    - a. Name (and any aliases); and
    - b. Date of birth;
  2. Information regarding the eligible youth's former foster care status such as the state or tribal child welfare system where the youth was in care, and approximate dates of care, if known; and
  3. Any available contact information for the youth, including:
    - i. Phone number,
    - ii. Friend or family phone number,
    - iii. Email address, and
    - iv. Any other communication method identified by the youth.
- C.** An eligible youth and responsible agency staff shall develop an individual service plan for the eligible youth to receive these services.
- D.** The individual service plan shall address the level of need based on the items noted in subsection (A).
- Historical Note**
- New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-207. Re-entry Into Out-of-home Care**
- A.** The Department shall facilitate re-entry into out-of-home care for eligible youth participating in the Transitional Independent Living Program.
- B.** On request for re-entry by the eligible youth, the Department shall confirm the eligible youth's request to receive out-of-home care, supervision, and other services with the youth and within ten work days:
1. Facilitate a meeting with the eligible youth to review the requirements under R21-5-205;
  2. Assist the eligible youth to develop an individual case plan that includes an effective date for reopening the Department case;
  3. Identify the name and contact information of the Child Safety Worker or responsible agency staff assigned to the case;
  4. Identify the out-of-home care type selected such as, foster home, residential group care facility, Independent Living Program, or other arrangement;
  5. Notify the identified Child Safety Worker or responsible agency staff assigned to the case; and
  6. Complete all necessary authorizations for out-of-home care and other services to reasonably ensure a smooth transition from the TIL Services to the IL Services.
- C.** If the eligible youth reports he or she is in crisis and unsafe, the Department shall immediately assess the youth's safety and assist the youth to secure a safe living arrangement and to manage the crisis.
- D.** An eligible youth may request to postpone re-entry, decline re-entry at any time, or re-initiate the request any time prior to the eligible youth's 21st birthday. The responsibilities of the Department to process the request for re-entry shall begin upon the Department's receipt of the eligible youth's request for re-entry under subsection (B).
- E.** Supports and services shall continue for youth who re-enter out-of-home care, as outlined in R21-5-205.
- F.** If the Department denies re-entry, the Department shall provide the youth with written notification of the reason for this decision and the youth's grievance and appeal rights within 15 work days of the request for re-entry.
- Historical Note**
- New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-208. Termination of Services**
- A.** The Department may terminate IL Services, including out-of-home care for foster youth 18 through 20 years of age, and TIL services if the eligible youth:
1. Reaches the age of 21 years;
  2. Reaches the age of 18 years and does not desire continued services;
  3. Makes a voluntary decision to terminate services; or
  4. Demonstrates substantial non-compliance or otherwise refuses to meet the requirements of the individual case plan or individual service plan after the responsible agency staff or designee has made active efforts to engage the eligible youth in identifying and resolving issues, including assessing the effectiveness of current services, and identifying and providing additional or different support services.
- B.** The Department shall deny IL Services, including out-of-home care for foster youth age 18 through 20 years, and TIL services if the Department determines the person is:
1. Not eligible;
  2. Unwilling to create an individual case or service plan; or
  3. Not participating in the individual case or service plan.
- C.** The Child Safety Worker or responsible agency staff shall notify the person in writing of the Department's decision to terminate or deny services within ten work days of the person's application for services.
- D.** The notice shall include information on the person's right to grieve any decision to terminate or deny services.
- E.** Within ten work days of the notice to terminate or deny services, the Child Safety Worker or responsible agency staff shall contact the person to:
1. Assist the person through the grievance process including the completion and submittal of any required Department forms; or
  2. Identify and engage a personal advocate to assist the person through the grievance process, including the completion and submittal of any required Department forms.
- F.** When termination of services to a foster youth is planned due to one of the reasons outlined in (A)(1-3) of this Section, the Child Safety Worker or responsible agency staff shall schedule a discharge staffing with the foster youth within ten work days of the foster youth's 21st birthday or the Department's receipt of the foster youth's notice to discontinue services to provide any necessary documents not previously provided, such as a birth certificate, social security card, state identification card, credit report, and a copy of the foster youth's health and education records.
- G.** The Department shall not terminate services for substantial non-compliance under subsection (A)(4) until the Child Safety Worker or responsible agency staff satisfies all responsibilities including:
1. Staffing of the individual case or service plan;
  2. Adhering to the grievance process described in R21-5-209; and

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3. Developing and implementing a discharge plan that provides information on available community resources, and connects the person to those resources.
- H.** Services shall remain in effect until the reasons for termination are resolved or the grievance or appeal process is completed.
- I.** For Independent Living Subsidy only, if the Department determines that continuation of the Independent Living Subsidy would place the foster youth at risk of immediate harm, the Child Safety Worker or responsible agency staff shall:
1. Document this fact in the case file progress notes, and
  2. Arrange for a safe living arrangement and sufficient support services to reasonably ensure the foster youth's safety in the interim.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-209. Grievance Process**

- A.** A person eligible for services under R21-5-204 who disagrees with a Department adverse action decision to reduce, terminate, or deny services for that person may:
1. File a grievance under this Section;
  2. Choose not to file a grievance and appeal the adverse action under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the adverse action decision reducing, terminating, or denying services; or
  3. File a grievance, and if the person is dissatisfied with the results of the grievance process, appeal under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the grievance response letter.
- B.** In the event that a person disagrees with a Department decision to reduce, terminate, or deny services, the Child Safety Worker or responsible agency staff shall:
1. Inform the person of the formal grievance process;
  2. Provide the person with the Department's grievance form and directions for submittal to the designated Department staff, such as the Department's Ombudsman's Office; and
  3. Offer to assist the person in completing and submitting the form, or referring the person to the appropriate Department staff, such as the Department's Ombudsman, for assistance in completing and submitting the form.
- C.** Upon receipt of the grievance form, the Department shall:
1. Schedule a face-to-face meeting with the person who filed the grievance within seven work days from the date the grievance was received by the Department, or schedule a teleconference if a face-to-face meeting is not possible;
  2. Evaluate the grievance to determine if the grievance can be resolved by the Department to the satisfaction of the person;
  3. Mail a grievance response letter to the person within three work days of the meeting; and
  4. Include an appeal form with the grievance response letter so the person may appeal the adverse action.
- D.** If the person agrees with the Department's decision to terminate services, the Child Safety Worker or responsible agency staff shall proceed with case closure including completing a discharge plan with the person that includes information on aftercare services and other community based support.
- E.** The Department shall retain documentation of all grievances in the case file according to the Department's retention schedule.

**Historical Note**

New Section made by final exempt rulemaking at 21

A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 3. DEPARTMENT ADOPTION SERVICES****R21-5-301. Definitions**

In addition to the definitions in A.R.S. § 8-101, the following definitions apply in this Article, Article 4 of this Chapter, and 21 A.A.C. 9:

1. "Adoptable child" means a child who is legally available for adoption but who has not been placed for adoption.
2. "Adoptee" means a child who is the subject of a legal petition for adoption.
3. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
4. "Adoption entity" or "entity" means the Department and includes an adoption agency, but does not include a private attorney who is licensed to practice law in the state of Arizona and who is only assisting in a direct placement adoption to the extent allowed by A.R.S. § 8-130(C).
5. "Adoption placement" or "placement" means the act of placing an adoptable child in the home of an adoptive parent who has filed, or is contemplating filing, a petition to adopt the child.
6. "Adoption Registry" means the electronic database described in A.R.S. § 8-105.
7. "Adoption services" means activities conducted in furtherance of an adoption and includes the activities listed in A.A.C. R21-5-303 and R21-9-201(B).
8. "Adoptive parent" means an individual who has successfully completed the application process and has been certified by the court to adopt. An adoptive parent includes an individual who does not have a child placed in their home.
9. "Agency placement" means the child is placed in an adoptive home chosen by the adoption agency.
10. "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 under A.R.S. Title 36, Chapter 29.
11. "Applicant" means an individual who has applied to become an adoptive parent.
12. "Birth parent" means the biological mother or father of a child.
13. "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.
14. "Certification application" means the form that an applicant submits to an adoption entity or to the court to request a certification investigation to become certified as an adoptive parent.
15. "Certification investigation" means the process referred to in A.R.S. § 8-105(C) by which an adoption entity determines if an applicant is a fit and proper person to adopt.
16. "Certification order" means a judicial determination that an applicant is acceptable to adopt children.
17. "Certification report" or "adoptive home study" means the written report described in A.R.S. § 8-105, in which an adoption entity summarizes the results of a certification investigation and makes a recommendation for or against certification of an applicant.
18. "Child with special needs" means a child who has one of the special needs listed in A.R.S. § 8-141.

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19. "Department" or "DCS" means the Arizona Department of Child Safety.
20. "Developmentally appropriate" means an action that takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. A child's pattern and history of growth, personality, and learning style.
21. "Direct placement" means the child is placed in an adoptive home by the birth parent or legal parent.
22. "Final report to the court" means a written report that includes a social study under A.R.S. § 8-112, in which an adoption entity advises the court of the entity's assessment and recommendations about the finalization of a particular adoption.
23. "Foster parent" means the same as in A.R.S. § 8-501.
24. "ICPC" means the Interstate Compact on the Placement of Children described in A.R.S. § 8-548.
25. "ICWA" means the Indian Child Welfare Act described in 25 U.S.C. 1901 et seq.
26. "Legally available" means a child whose birth or legal parents are deceased, have voluntarily relinquished their parental rights, or whose parental rights have been terminated by the court.
27. "License" means a permission granted by the Department to an adoption agency authorizing the adoption agency to perform adoption services in A.A.C. R21-9-201(B).
28. "Open adoption" means an adoption in which the adoptive parent and the birth or legal parent agree to share varying degrees of each other's personal information for future contact.
29. "Out-of-state agency" means any person or entity that is authorized or licensed by a state other than Arizona, or a foreign country, to perform adoption services.
30. "Placed child" means an adoptable child who has been placed with an adoptive parent, and the adoptive parent has not yet filed a petition to adopt the child.
31. "Placement supervision period" means the time period from the date of adoption placement until the court enters a final order of adoption, during which the adoptive parent has the rights under A.R.S. § 8-113.
32. "Reasonable fee" means
  - a. A fee commensurate with:
    - i. The actual cost of providing a specific adoption service or item to a specific individual, or
    - ii. The average cost of a service or item if the adoption entity routinely uses an averaging method to determine the cost of a particular service or item.
  - b. A reasonable fee may include reasonable compensation for officers and employees and a reasonable profit margin above actual or averaged costs.
33. "Service plan" means a written document of developmentally appropriate pre-placement and post-placement services necessary to facilitate a child's transition to an adoptive home.
34. "Social study" means the written report described in A.R.S. § 8-112, after a petition for adoption has been filed, where the adoption entity summarizes the results of its investigation, and makes a definite recommendation for or against the proposed adoption and the reasons for that recommendation.

**Historical Note**

New Section made by final exempt rulemaking at 21

A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-302. Adoption Registry: Information Maintained; Confidentiality**

- A. The Department shall maintain and keep current the Adoption Registry with the information required under A.R.S. § 8-105. The Adoption Registry shall include the following current information for each child or adoptive parent listed on the Adoption Registry:
  1. The child's availability for adoptive placement,
  2. The adoptive parent's certification status,
  3. The adoptive parent's availability for adoptive placement, and
  4. The type of child the adoptive parent is open to considering for adoption including:
    - a. Age;
    - b. Sex; or
    - c. Special needs.
- B. Upon request, the Department shall provide personally identifiable Adoption Registry information to:
  1. The court;
  2. An adoption agency, including a private attorney;
  3. Under a court order, a National or Regional Adoption registry and exchange; and
  4. An out-of-state agency.
- C. Before providing information, the Department shall obtain, from the person requesting the information, the following:
  1. The name and affiliation of the person requesting the information;
  2. The reason for the request; and
  3. If the requesting party is other than a court representative, a signed statement acknowledging that the information is confidential and promising not to release the information to anyone except as allowed by A.R.S. §§ 8-120, 8-121, and 8-105.

**Historical Note**

New Section made by final exempt rulemaking at 21  
A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-303. Department Adoption Services**

- A. The Department provides the following adoption services for families and children in accordance with the limitations and provisions of A.R.S. Title 8, Chapter 1, Article 1:
  1. For families:
    - a. Recruiting adoptive parents;
    - b. Informing persons interested in adopting a child about the adoption process;
    - c. Conducting certification investigations of applicants under A.R.S. § 8-105;
    - d. Preparing certification reports under A.R.S. § 8-105; and
    - e. Submitting the names and profiles of adoptive parents for listing in the Adoption Registry.
  2. For children:
    - a. Accepting adoption consents from birth parents;
    - b. Preparing non-identifying, pre-placement information on adoptive children for adoptive parents, as required in A.R.S. § 8-129;
    - c. Submitting the name and profile of an adoptive child for listing in the Adoption Registry;
    - d. Preparing a child for adoptive placement;
    - e. Matching an adoptable child with an adoptive parent;
    - f. Placing an adoptable child in the home of an adoptive parent;

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- g. Investigating and reporting to the court on the acceptability of an adoptive parent under A.R.S. § 8-105(H);
  - h. Monitoring an adoption placement during the placement supervision period;
  - i. Providing services to a child placed for adoption and the adoptive family to assist with adjustment to the adoption placement;
  - j. Conducting a social study under A.R.S. § 8-112 and preparing a final report to the court determining suitability of placement; and
  - k. Assisting an attorney by providing legal documents to enable an adoptive parent to complete the adoption process.
- B.** When performing adoption services, the Department shall adhere to the standards established for an adoption agency in 21 A.A.C. 9.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-304. Department Procedures for Processing Certification Applications**

- A.** Upon review of a certification application, the Department shall notify the applicant in writing that the application is either complete or incomplete. An application is complete when it contains the information and supporting documentation described in R21-5-404. If the application is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete application has 30 days from the date of the notice to provide the missing information. If the applicant fails to do so, the Department may close the file. An applicant whose file has been closed and who later wishes to apply for certification may reapply.
- C.** Upon review of a complete application, the Department shall decide whether to accept the application, according to the priority schedule listed in R21-5-305, and the availability of the Department's resources. If the Department cannot accept the application, the Department shall return the original application and all supporting documentation to the applicant. The applicant may reapply.
- D.** After the Department accepts the completed application, the Department shall provide the applicant written notice of the acceptance. The Department shall complete the certification investigation as specified in R21-5-405 within 90 days of the date of the notice. The Department shall prepare a certification report under R21-5-406.
- E.** The Department shall process a renewal application under this Section and R21-5-407.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-305. Department Priorities for Receipt of Services**

The Department shall accept and process certification applications and render adoption services according to the following priority schedule:

1. An applicant for whom the court has ordered the Department to do a certification investigation and report;
2. An applicant seeking to adopt a particular adoptable child with special needs;
3. An applicant wishing to adopt a child with special needs;
4. An applicant considering adopting a child with special needs; and
5. All other applicants.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-306. Department Recruitment Efforts**

The Department shall actively recruit persons to adopt children with special needs by:

1. Publicizing the need for such adoptive parents;
2. Registering adoptable children, as appropriate, with the Adoption Registry or other local, state, regional and national adoption resources;
3. Advising prospective adoptive parents of:
  - a. The availability of children with special needs,
  - b. The procedures involved in adopting such children, and
  - c. The support services and subsidies that may be available to persons adopting such children; and
4. Other measures similar to those described in this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-307. Fees; Waiver**

- A.** The Department shall charge the following fees for performing a:
1. Certification investigation and preparing a certification report, \$1,200; and
  2. Records search for a confidential intermediary, \$50.00.
- B.** The Department shall waive the certification fee in subsection (A)(1) if the applicant adopts a child in the custody of the Department.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-308. Termination of Adoption Services**

- A.** The Department may terminate services to an applicant or adoptive parent when:
1. The adoption is finalized;
  2. The applicant or adoptive parent requests closure before receiving a child for placement;
  3. The applicant or adoptive parent ceases to be a resident of Arizona before receiving a child for placement;
  4. The court declines to certify the applicant or adoptive parent;
  5. The applicant or adoptive parent refuses to comply with the requirements in A.R.S. Title 8, Chapter 1, Article 1, or this Chapter, Articles 3 and 4;
  6. The applicant fails to submit a completed certification application within 90 days of the date on which the Department sent the person an application form;
  7. The adoptive parent is no longer willing to be an adoptive parent; or
  8. The adoptive parent is no longer certified to adopt.
- B.** The Department may terminate adoption services to an adoptive child when:
1. The court issues a final adoption order; or
  2. The court determines that adoption is no longer the most appropriate case plan for the child, and the Department provides alternate services consistent with the child's new case plan.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

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**ARTICLE 4. ADOPTION ENTITY SERVICES****R21-5-401. Definitions**

The definitions in R21-5-301 apply in this Article.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-402. Recruitment**

- A. When recruiting applicants, an adoption entity shall comply with the requirements of this Section.
- B. The adoption entity shall conduct recruitment efforts pursuant to a written plan, which shall describe:
  1. Specific recruitment goals, including:
    - a. The number and composition of adoptive parents the entity will serve; and
    - b. The children the entity will accept for placement and any limitations such as:
      - i. Age;
      - ii. Medical special needs;
      - iii. Developmental special needs;
      - iv. Mental health; or behavioral health special needs.
  2. Methods of recruitment;
  3. The number and professional qualifications of staff designated to handle recruitment; and
  4. The means by which the adoption entity shall fund the agency's recruitment efforts.
- C. The adoption entity's recruitment efforts shall be consistent with the personal characteristics of the children the entity has available for adoption and reasonably expects will become available for adoption through the entity.
- D. An adoption entity shall not:
  1. Promise to place more children than the adoption entity's prior history shows it can reasonably expect to place;
  2. Promise to place a child in less time than the average waiting period demonstrated by the adoption entity's past practice;
  3. Promise adoption subsidy prior to the formal approval and receipt of an adoption assistance agreement that meets the requirements of A.R.S. Title 8 Chapter 1 Article 2; or
  4. Make any other statements or promises the entity knows or reasonably should know are false, misleading, or inaccurate.
- E. The Department may take an adverse licensing action against an adoption agency that does not comply with this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-403. Orientation: Persons Interested in Adoption**

- A. Prior to accepting a certification application from a person considering the adoption of a child, or an application for placement from a person who intends to seek a placement through the adoption entity, an adoption entity shall provide the person with an adoption orientation, which shall explain the following:
  1. The adoption process, including all legally mandated procedures, and estimated time-frames for completion of such procedures;
  2. The adoption entity's policies and procedures that directly affect services to adoptive parents;
  3. The adoption entity's fee structure and written fee agreement;
  4. The types and number of children the agency typically has had and reasonably expects to have available for

adoption placement and the average length of time between certification and placement;

5. The Department's responsibility for licensing and monitoring agencies, and the public's right to register a complaint about an agency as prescribed in 21 A.A.C. 9, Article 2;
  6. The function of the Adoption Registry and the adoptive parent's right to decide whether to be included in the Adoption Registry; and
  7. Confidentiality requirements, open adoptions, and the confidential intermediary program described in A.R.S. § 8-134.
- B. A person who is already knowledgeable about all or part of the matters listed in subsection (A) may waive orientation on those matters, with the approval of the adoption entity. A person may be knowledgeable due to a prior adoption through an Arizona adoption entity, employment in adoption services, or for other similar reasons.
  - C. An adoption entity shall maintain written documentation showing that any person who has applied to the entity for certification or for placement of a child has received the orientation described in subsection (A), required by R21-9-227, or has obtained a waiver described in subsection (B). If some or all of the adoption orientation is waived, the adoption entity shall document the matters waived and the reasons for the waiver.
  - D. An adoption entity shall not charge a person for anything other than a certification application fee, or enter into an adoption fee agreement with a person, until the person has received the orientation in subsection (A).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-404. Application for Certification**

An applicant who wishes to become certified as an adoptive parent shall apply for certification as provided in A.R.S. § 8-105. An adoption entity shall require an applicant to provide at least the following information:

1. Personally identifying information for each prospective adoptive parent, including:
  - a. Name and date of birth;
  - b. Social Security number;
  - c. Race and ethnicity;
  - d. Physical description;
  - e. Current address and duration of Arizona residency;
  - f. Marital history; and
  - g. The name, address, and phone number of immediate family members, including emancipated adult children;
2. The name, date of birth, and social security number of any person currently residing with the applicant;
3. A listing of the applicant's insurance policies, including:
  - a. Any insurance that may be available to cover the medical expenses of a birth mother or adoptive child; and
  - b. The name of the insured, the insurance policy number, and the effective dates of coverage;
4. A current financial statement describing the applicant's assets, income, debts, and financial obligations;
5. A physician's statement as to the applicant's current physical and mental health;
6. A medical and psychological history on the applicant and the applicant's household members. The history may be a declaration by the applicant of past physical and mental illness for the applicant and any household member;
7. The applicant's employment history;

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8. The applicant's social history;
  9. A statement from the applicant as to the type of child the applicant seeks to adopt and whether the applicant desires to adopt or would consider adopting a child with special needs;
  10. Information on the following legal proceedings in which the applicant has been a party:
    - a. Dependency proceedings,
    - b. Severance or termination of parental rights proceedings,
    - c. Child support enforcement proceedings,
    - d. Proceedings involving allegations of child abuse or neglect,
    - e. Adoption proceedings, or
    - f. All criminal proceedings;
  11. The applicant's prior history of adoption certification, including prior applications for certification and the dates of any certification denials;
  12. Whether the applicant wishes to be listed on the Adoption Registry;
  13. A fingerprint card or fingerprints processed through the Court, meeting the requirements of A.R.S. § 41.1758.07 on each applicant and each adult residing in the home more than the age of 18 years; and
  14. The names, addresses, and phone numbers of five personal references; two references from family members related to the applicant by blood or marriage, and three other references, who have known the applicant at least two years and who can attest to the applicant's character and fitness to adopt.
    - a. A physician's statement regarding the physical health of other adult household members and the applicant's children living in the home;
    - b. A statement from a psychiatrist or psychologist regarding the mental health of the applicant and the applicant's other household members;
    - c. Birth certificates;
    - d. Marriage certificate;
    - e. Dissolution of marriage or divorce papers and orders, including child support documentation;
    - f. Military discharge papers;
    - g. Financial statements, tax returns, pay stubs, and W-2 statements;
    - h. Bankruptcy papers;
    - i. Insurance policy information; and
    - j. Documentation showing Arizona residency.
- B.** A person who meets the qualifications listed in 21 A.A.C. 9, Article 2, shall perform the certification investigation and shall document all personal contacts made and all information reviewed and considered during the investigation.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-406. Certification Report and Recommendation**

- A.** Upon completion of the certification investigation, the adoption entity shall prepare a certification report under A.R.S. § 8-105.
- B.** In determining whether to recommend certification of an applicant, the adoption entity shall consider all factors bearing on fitness to adopt, including, but not limited to:
1. The factors listed in A.R.S. § 8-105;
  2. The length and stability of the applicant's marital relationship, if applicable;
  3. The applicant's age and health;
  4. Past, significant disturbances, or events in the applicant's immediate family, such as:
    - a. Involuntary job separation,
    - b. Divorce, or death of spouse, child, or parent, and
    - c. History of child abuse or neglect;
  5. The applicant's ability to financially provide for an adopted child; and
  6. The applicant's history of providing financial support to the applicant's other children, including compliance with court-ordered child support obligations.
- C.** The certification report shall specifically note any instances where an applicant has:
1. Been charged with, been convicted of, pled no contest to, or is awaiting trial, on charges of an offense listed in A.R.S. § 41-1758.07; or
  2. Been a party to a dependency, guardianship, or termination of parental rights action.
- D.** If the report recommends denial of certification, the adoption entity shall send the applicant written notice of the unfavorable recommendation, the reason for the denial, and an explanation of the applicant's right under A.R.S. § 8-105, to petition the court for review. The adoption entity shall mail the notice to the applicant at least five work days prior to filing the certification report with the Court.
- E.** The adoption entity may notify the adoptive parent of the Court's certification decision if the Court fails to do so.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

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**R21-5-407. Renewal of Certification**

- A.** A certified adoptive parent who has not filed a petition for adoption within one year of the original certification order, may apply for an extension of certification, as provided in A.R.S. § 8-105.
- B.** If the Court directs an adoption entity to investigate a certified adoptive parent who has requested a renewal of certification, the entity shall obtain from the adoptive parent seeking renewal:
1. A copy of the request for renewal of certification;
  2. An updated profile of any changes in the certified adoptive parent's social, family, medical, and financial circumstances;
  3. New fingerprint clearance per Court requirements, following original certification;
  4. A current physical health statement for all members of the adoptive parent's household at least every third year following original certification; and
  5. Other information as the Court may request.
- C.** When investigating a request for a renewal of certification, the adoption entity shall, at a minimum, complete the following:
1. Conduct an in person interview at the applicant's home with the applicant and the applicant's other household members more than the age of five years,
  2. Investigate any change in circumstances described in the request for renewal as necessary to determine continuing fitness to adopt, and
  3. Document all actions.
- D.** Upon completion of the renewal investigation, the adoption entity shall prepare and file with the Court a certification investigation that shall contain a recommendation for or against renewal of certification.
- E.** If the adoption entity recommends that certification not be renewed, the entity shall send the adoptive parent the notice in R21-5-406(D).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-408. Communication with Adoptive Parents Awaiting Placement**

Upon request, an adoption entity shall inform an adoptive parent awaiting placement of a child of the following:

1. The status of the adoptive parent's case;
2. The number of children the adoption entity currently has available for adoption;
3. The number of times the adoptive parent has been considered for the placement of a child;
4. The number of approved adoptive parents awaiting placement of a child through the adoption entity; and
5. The number of placements the adoption entity made in the prior year, the number of placements the adoption entity has made to date in the current year, and the number of placements the adoption entity anticipates making during the remainder of the current year.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-409. Prohibitions Regarding Birth Parents**

An adoption entity shall not:

1. Promise a birth parent that the birth parent shall have future contact with the child or the adoptive parent but may explain the concept of open adoption;
2. Promise a birth parent that the child will be placed with a specific adoptive parent or type of adoptive parent,

except in a direct placement adoption. The adoption entity may advise the parent that it will use the entity's best efforts to honor any placement preferences the birth parent may have, to the extent that such preferences are consistent with the best interests of the child;

3. Promise a birth parent any financial or other consideration prohibited by law; or
4. Do or say anything to coerce or pressure a birth parent to sign a consent to adopt.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-410. Information about Birth Parents**

**A.** Before accepting a child for placement, the adoption entity shall make a good faith effort to obtain the following information described in this Section from the child's birth parent, or person having custody of the child:

1. Information about each birth parent including:
  - a. Name and any aliases used;
  - b. Address, phone number, and residential history;
  - c. Date and place of birth;
  - d. Social security number;
  - e. Race, citizenship, and any Native American tribal affiliation or membership;
  - f. Physical description;
  - g. Name of current employer and employment history;
  - h. Educational history;
  - i. Marital history and status;
  - j. Record of other births and children born to the birth parent;
  - k. Hobbies;
  - l. Future plans;
  - m. Record of arrests or convictions;
  - n. Medical, psychological, and substance use history;
  - o. For the birth mother, history of prenatal care, gestational substance or drug abuse, pregnancy, and delivery;
  - p. Immediate family relationships; and
  - q. Significant family events.
2. An explanation of the birth parent's decision to place the child for adoption, the factors that influenced the decision, and a record of any counseling the birth parent received concerning the decision.
3. A record of the birth parent's contact with the child.
4. A statement of the birth parent's feelings about future contact with the child.
5. A list of the birth parent's preferences regarding an adoptive home for the child.
6. Medical or psychological history on the birth parent's own parents, siblings, grandparents, aunts, uncles, and first cousins.
7. Information on the child being surrendered for adoption, as appropriate to the age of the child and the child's:
  - a. Developmental history,
  - b. Medical and psychological history,
  - c. Family background,
  - d. Educational history, and
  - e. Membership in or affiliation with any Native American tribe.
8. A listing of the birth parent's insurance policies, including:
  - a. Any insurance that may be available to cover the medical expenses of the birth mother or adoptive child; and

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- b. The name of the insured, the insurance policy number, and the effective dates of coverage.
- B.** The adoption entity shall document all statements and information in a permanent record.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-411. Pre-consent Conference with Birth Parents**

- A.** The adoption entity shall have a pre-consent conference with each birth parent who must provide consent to adoption under A.R.S. § 8-106, to explain in a language and form that each birth parent can understand the following:
1. The legal and practical consequences of executing a consent, including:
    - a. Applicable ICWA provisions; and
    - b. The fact that the consent, and all other affidavits executed in connection with an adoption, are executed under penalty of perjury;
  2. The irrevocability and inalterability of a consent;
  3. The legal prohibition against paying the birth parent to execute a consent;
  4. The fact that the birth parent has no obligation to sign the consent; and
  5. The provisions of A.R.S. § 8-106, regarding an affidavit of any potential father.
- B.** The pre-consent conference shall occur:
1. No earlier than 12 hours after the birth of a child if the conference was not held before the birth under subsection (B)(2);
  2. No earlier than 60 days before the anticipated due date, if the conference is held before the child's birth;
  3. At least 24 hours before presenting a birth parent with the consent form for signature; and
  4. At a time that takes into account the known medical and emotional condition of each available birth parent.
- C.** The person conducting the pre-consent conference shall provide the birth parent with a sample consent form and shall convey the information described in subsection (A) in a language and form that the birth parent can understand.
- D.** The person conducting the pre-consent conference shall document that the information was given and understood and shall obtain the birth parent's signature on the documentation. If the conference is by telephone under subsection (E), the person may obtain the signature through the mail at a later date. If the conference is not held, the person shall document the reason under subsection (E).
- E.** The pre-consent conference may be by telephone and is not required if the birth parent cannot be located or refuses to participate in the conference. The adoption entity shall document the reason why the conference did not occur.
- F.** If required to obtain a consent from a birth father under A.R.S. § 8-106, the adoption entity shall, prior to obtaining the birth father's signature, advise the birth father of the matters listed in subsection (A) in a form and language the birth father can understand. The adoption entity shall include the advice listed in subsection (A) on the consent form.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-412. Consent to Adopt; Unknown Birth Parent**

- A.** A person who obtains a birth parent's signature on a consent shall not do so until the person reasonably determines:
1. That the requirements of R21-5-411 have been met;
  2. That the birth parent is not acting under duress;

3. That the birth parent is physically and mentally capable of exercising informed consent; and
4. That the birth parent has revealed all information known about the identity and location of the other birth parent.

- B.** No one shall advise a birth parent to falsely state that he or she does not know the identity or location of the other birth parent.
- C.** When a birth parent professes not to know the identity or location of the other birth parent, the person taking the consent shall explain the risks and consequences of this response, including the following:
1. Potential invalidation of the adoption;
  2. Potential detriment to the child's social and physical well-being, due to lack of information concerning the unidentified birth parent's social and medical history; and
  3. Potential penalties for perjury.
- D.** When a birth parent knows, but refuses to disclose, the identity or location of the other birth parent, the adoption entity shall advise the birth parent as provided in subsection (C) and shall also explain that the Court may refuse to finalize the adoption.
- E.** The adoption entity shall document all action taken in compliance with this Section.
- F.** The adoption entity shall give the birth parent a copy of the consent and retain a copy in the permanent adoption file.
- G.** The adoption entity shall request a search of the confidential putative fathers registry of information that the Arizona Department of Health Services maintains under A.R.S. § 8-106.01 when:
1. A birth father's identity is unknown or undisclosed, and
  2. The adoption entity believes that a search of the putative fathers registry may prevent disruption of a placement or an adoption.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-413. Adoptable Child: Assessment and Service Plan**

- A.** Prior to selecting an adoptive placement for an adoptable child, the adoption entity shall:
1. Assess the child's medical, psychological, social, and developmental needs;
  2. Design an adoptive family profile consistent with the child's needs and best interests;
  3. Develop a written service plan; and
  4. Assess whether the child is a potential candidate for an adoption subsidy.
- B.** The service plan shall, at a minimum, include:
1. Placing the child on the Adoption Registry if there is no adoptive parent readily available to adopt the child;
  2. Giving the child a developmentally appropriate explanation of the adoption process.
- C.** The adoption entity shall provide the child with services in accordance with the child's service plan.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-414. Placement Determination**

- A.** An adoption entity shall have and follow a written policy for making placement recommendations and decisions in both direct placement and adoption placement adoptions.
- B.** Except as otherwise provided in subsection (C), in an agency placement adoption a team shall make the placement decision. The team shall at a minimum, include:
1. The case manager or person who assessed the adoptable child, and

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2. The case manager or person who is knowledgeable about the potential adoptive parents for the adoptable child.
- C. In international adoptions, where the case manager or person who assessed the child is out of the country and unavailable, the adoption team shall include the person who is most familiar with the adoptable child's needs.
- D. In an agency placement adoption, an adoption entity shall place an adoptable child in the adoptive setting that best meets the child's safety, social, emotional, physical and mental health needs. In determining who can best meet the needs, the adoption entity shall consider ICWA placement preferences if applicable and the following relevant factors in no order of preference:
1. The marital status, length and stability of the marital relationship of the adoptive parent;
  2. The family's ability to meet the child's emotional, physical, mental, and social needs;
  3. The family's ability to financially provide for the child;
  4. The wishes of a child who is 12 years of age or more;
  5. Family relationships between the child and the adoptive parent's family members;
  6. The placement of the child's siblings;
  7. The availability of relatives, the adoptable child's former foster parents, or other significant persons to provide support to the adoptive parent and child;
  8. The wishes of the child's birth parent; and
  9. All information in the case files of the child and the adoptive parent.
- E. The adoption entity shall document the placement decision.
1. For adoptions conducted pursuant to the ICPC, the documentation shall comply with the requirements of the ICPC under A.R.S. § 8-548 et seq.
  2. For all other adoptions, the documentation shall include the following:
    - a. The adoptive child's critical needs and characteristics that weigh most heavily in the placement determination,
    - b. The names and general characteristics of those adoptive parents who most closely match the child's needs and who are seriously considered for placement, and
    - c. The reasons why a particular adoptive parent chosen for placement best meets the child's needs.
- F. For adoptions not covered by the ICPC, the adoption entity may document the placement decision in a file or placement log that is separate from the clients' case files.
5. Information on adoption subsidy that may be available for the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-4-416. Transportation**

An adoption entity that transports an adoptive child shall:

1. Ensure that any person who transports an adoptive child is informed of the child's medical needs and is capable of meeting any medical needs that are reasonably likely to arise during transport;
2. Not leave an adoptive child unattended during transportation if the adoptive 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 entity has determined, and documented in the child's record, that the child is physically and emotionally incapable of traveling alone;
3. Require all persons who provide transport to carry personal identification and a written statement from the adoption entity describing the person's authority and responsibilities while performing transport duties;
4. Require proof of driver's license from any person accepting temporary or permanent responsibility for transporting an adoptive child during the course of placement;
5. Document all transportation plans and actual transportation events in the child's record;
6. All vehicles used in transporting adoptive children shall be insured;
7. Ensure that an adoptive child is properly secured in a child restraint system that meets the requirements listed in R21-9-224(E).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-417. Placement Services**

- A. An adoption entity shall make counseling services available to the adoptive parents' family as the entity deems reasonable and necessary to facilitate the child's acceptance into the adoptive parent's family and to preserve stability. The adoption entity may make such services available by advising the adoptive family that such services may be beneficial and referring the adoptive parent and his or her family to community resources and providers.
- B. The adoption entity shall make information on adoption related educational and supportive resources available to adoptive parents.
- C. The adoptive parent must sign a document stating if he or she is declining any form of adoption counseling.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-418. Post-placement Supervision: Non-foster Parent Placement**

- A. When a child is placed for adoption with a person who is not the child's foster parent, a case manager from the adoption entity shall visit the home within 30 calendar days of the date of adoptive placement to:
1. Ensure that the adoptive parent received all available non-identifying information from the adoption entity on the child;

**Historical Note**  
New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-415. Provision of Information on a Placed Child**

After selecting an adoptive placement for a child, and before placing the child with the chosen adoptive parent, the adoption entity shall provide the adoptive parent with all non-identifying information available on the child, including, without limitation, the following:

1. All records concerning the child's medical, psychological, social, legal, family, and educational background;
2. All records concerning the birth parents' medical, psychological, social, legal, family, and educational background;
3. The medical and social background on the child's other immediate family members, including siblings and birth grandparents;
4. The child's plan for adoption services, as described in R21-4-413; and

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2. Address any questions or concerns the adoptive parent or child may have about the adoption process or placement;
  3. Ensure that the family has addressed the educational needs of a school-age child; and
  4. Ensure that an adoptive parent who works has made appropriate child care arrangements.
- B.** Following the initial placement visit in subsection (A), a case manager from the adoption entity shall:
1. Visit the adoptive family at least once every three months until the adoption is finalized:
    - a. Except, when the adoptive child is a child with special needs, the visits shall occur at least once a month; and
    - b. During the first six months following the initial placement visit, at least alternating visits shall occur at the adoptive family's home;
  2. Interview all members of the adoptive family's household during the placement supervision period;
  3. Discuss how the child and the adoptive parent's family are adapting, the current relationship among members of the adoptive parent's family, and the following issues with the adoptive parent if appropriate in light of the child's age and development:
    - a. How the presence of the child has changed familial relationships;
    - b. How the child and the extended family view each other;
    - c. The role each family member has assumed regarding child care and discipline;
    - d. How the adoptive parent is coping with the needs and demands of the placed child;
    - e. How the child challenges or tests the placement and how the family reacts to these episodes, including any feelings of insecurity about the propriety of the family members' response;
    - f. How the family perceives the child's sense of identity and the need to fill in gaps in the child's history; and
    - g. How the child has adjusted to the school environment;
  4. If developmentally appropriate, privately interview the child about:
    - a. The child's feelings about the adoption;
    - b. How the child and family are adapting; and
    - c. The child's relationships with the members of the family.
- C.** The case manager shall document all contacts and communications made under this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-419. Post-placement Supervision: Foster Parent Placement**

- A.** When a foster parent plans to adopt a foster child who is age 5 years or older, a case manager from the adoption entity shall privately interview the child and all members of the adoptive family household who are age 5 years or older about their feelings towards the adoption, before the adoption consent is signed.
- B.** When a child is placed for adoption with a person who has been a foster parent to the child, a case manager from the adoption entity shall conduct a home visit at least every two months from the time legal consent for adoption has been signed until the finalization of adoption unless the adoptive child is a child with special needs. If the adoptive child is a

child with special needs, the case manager shall visit at least once a month.

- C.** During the visits described in subsection (B), the case manager shall:
1. If developmentally appropriate, privately interview the child to discuss a child's feelings about the adoption; and
  2. Interview all members of the adoptive family household, including children, if developmentally appropriate, to discuss, as described in R21-5-418, how the child and family are adapting, and the current relationship among members of the family.
- D.** The case manager shall document all contacts and communications under this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-420. Protracted Placement**

If an adoption is not finalized within two years from the date of consent, and the child is still placed in the adoptive home, the adoption entity handling the adoption shall provide the Department with written documentation explaining the reason why the adoption has not been finalized, no later than 30 calendar days after the two-year period has ended.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-421. Finalizing the Placement**

An adoption entity shall cooperate with the adoptive parent and the attorney, if any, retained by the adoptive parent, to finalize the adoption.

1. The entity shall provide all information and documents needed to finalize the adoption and shall file a final written report to the court at least 14 calendar days before the final adoption hearing, or at such other time as the Court may require. The report shall include the information listed in this subsection, unless the entity has already provided this information in an earlier report, and the information has not changed since the earlier report.
  - a. The name and age of each adoptive parent and the relationship, if any, of each adoptive parent to the child to be adopted;
  - b. The name, age, and birthplace of the child to be adopted, and whether any or all of this information is unknown to the adoptive parent;
  - c. The entity or other source from which the adoptive parent received the child to be adopted;
  - d. The circumstances surrounding the surrender of the child to the entity;
  - e. The results of the entity's evaluation of the child and of the adoptive parent, including:
    - i. A description of the care the child is receiving;
    - ii. The adjustment of the child and parent; and
    - iii. A summary statement of the entity's recommendation to the court regarding finalization;
  - f. A full description of any property belonging to the child to be adopted;
2. For children 12 years of age and older, the adoption entity shall solicit and consider the child's wishes concerning adoption.
3. The adoption entity shall notify the AHCCCS Administration of any potential third party payer, as prescribed in A.R.S. § 36-2946, if the entity has not already done so.

**Historical Note**

New Section made by final exempt rulemaking at 21

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A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-422. Placement Disruption**

- A. When a placement fails, the adoption entity shall provide services, including counseling to the adoptive parent and his or her family and child, to help them cope with the loss and separation.
- B. An adoption entity shall have and follow written procedures for an adoptive placement disruption. The procedures shall include:
1. Provision of counseling services to the adoptive parent, his or her family, and the child as needed; and
  2. Provision for placement of the child in another adoptive home or other developmentally appropriate living arrangement.
- C. The adoptive entity shall document the reasons for the disruption and shall take such information into account when making future placements for the adoptive parent and the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-423. Confidentiality**

Any person or entity who participates in an adoption or provides adoption services shall comply with the confidentiality requirements under A.R.S. §§ 8-120, 8-121, and 36-2903.01.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 5. ADOPTION SUBSIDY****R21-5-501. Definitions**

In addition to the definitions in A.R.S. §§ 8-141 and 8-501, the following definitions apply in this Article.

1. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
2. "Adoption Specialist" means the Department of Child Safety Specialist, or adoption agency staff person, who is responsible for managing the child's case prior to the adoption finalization.
3. "Adoption subsidy" means the same as A.R.S. § 8-141, and includes nonrecurring adoption expenses under A.R.S. § 8-161 et seq. If the child qualifies, the adoption subsidy may include one or more of the following:
  - a. Medical, dental, and mental health subsidy;
  - b. Maintenance subsidy;
  - c. Special services subsidy; and
  - d. Reimbursement of nonrecurring adoption expenses.
4. "Adoption subsidy agreement" means the agreement in A.R.S. § 8-144 concerning the Adoption Subsidy Program and includes the agreement in A.R.S. § 8-162 concerning the nonrecurring adoption expense program.
5. "Adoption Subsidy Program" means a unit within the Department of Child Safety that administers the adoption subsidy.
6. "Adoption Subsidy Supervisor" means a Department employee who is responsible for the Adoption Subsidy Program within a defined geographic area, and that the Department has authorized to approve an adoption subsidy agreement.
7. "Adoptive parent" means an adult who the court has certified or approved to adopt a child, or an adult who has adopted a child.
8. "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.
9. "AHCCCS hospital reimbursement system" means the payment structure that AHCCCS uses to pay for inpatient and outpatient hospital services.
10. "Complete adoption subsidy application" means a packet containing the following:
  - a. An "Adoptive Family Subsidy Application" form provided by the Department that the adoptive parent, the Adoption Specialist, and Adoption Specialist supervisor have completed and signed; and
  - b. The supporting documentation and information requested in the "Adoptive Family Subsidy Application."
11. "Debilitating" means a lifelong, progressive, or fatal condition characterized by physical, mental, or developmental impairment that impedes an individual's ability to function independently.
12. "Department" or "DCS" means the Arizona Department of Child Safety.
13. "Developmental disability" means the same as A.R.S. § 8-141.
14. "Diagnose" means to identify a physical, psychological, social, learning, or developmental condition or disability according to the accepted standards of the medical, mental health, or educational professions.
15. "Emergency situation" means a circumstance that, if unaddressed, would be detrimental to a child's life, health, or safety.
16. "Emotional disturbance" means the same as A.R.S. § 8-141.
17. "Lawfully present in the United States" means the child is a U.S. citizen, national, or an alien authorized by an appropriate federal entity or court to be present in the United States.
18. "Legally free" means the parental rights of a child's birth or legal parents have been terminated.
19. "Maintenance subsidy" means a monthly payment paid to a custodial adoptive parent to assist with the costs directly related to meeting some of the adopted child's needs, including child care, health insurance co-payments and deductibles, and supplemental educational services for the adopted child.
20. "Mental disability" means the same as A.R.S. § 8-141.
21. "Nonrecurring adoption expenses" means the same as A.R.S. § 8-161, and are reasonable and necessary expenses directly related to the legal process of adopting a child with special needs. Allowable expenses include adoption fees, court costs, attorney's fees, fingerprinting fees, home study fees, costs for physical and psychological examinations, costs for placement supervision, and travel expenses necessary to complete the adoption.
22. "Physical disability" means the same as A.R.S. § 8-141.
23. "Qualified professional" means a practitioner licensed or certified by the state of Arizona or another state to evaluate and diagnose a condition or disability, or provide medical, dental, mental health services, or approved by the Department to provide educational or respite services.
24. "Sibling relationship" means two or more brothers or sisters who are related by blood or by law, and who are being adopted by the same family.
25. "Special allowance" means funds provided for clothing or personal expenses, therapeutic or personal attendant

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- care, and other specialized payments such as emergency clothing, education, and gift allowances.
26. "Special needs" means one or more of the following conditions which existed before the finalization of adoption:
    - a. Physical, mental or developmental disability.
    - b. Emotional disturbance.
    - c. High risk of physical or mental disease.
    - d. High risk of developmental disability.
    - e. Age of six or more years at the time of application for an adoption subsidy.
    - f. Sibling relationship.
    - g. Racial or ethnic factors.
    - h. High risk of severe emotional disturbance if removed from the care of his foster parents.
    - i. Any combination of the special needs described in this paragraph. A.R.S. § 8-141.
  27. "Special services subsidy" means financial assistance for extraordinary, infrequent, or uncommon needs related to a special needs condition specified in the adoption subsidy agreement.
  28. "Standard of care" means a medical or psychological procedure or process that is accepted as treatment for a specific illness, injury, medical, dental, learning, or psychological condition through custom, peer review, or consensus by the professional medical, dental, educational, or mental health community.
  29. "Title IV-E" means section 473 of Title IV of the Social Security Act, 42 U.S.C. 673, which establishes the federal adoption assistance program.
  30. "Title XIX" means Medicaid, as defined by Section 1900, Title XIX, of the Social Security Act, 42 U.S.C. 1396.
  31. "Title XX" means the Social Services Block Grant, as defined by Section 2001, Title XX, of the Social Security Act, 42 U.S.C. 1397.
  32. "Undiagnosed pre-existing special need condition" means a physical, mental or developmental disability or emotional disturbance that existed before a court finalized the child's adoption, and that a qualified professional did not confirm before the child's adoption.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-502. Eligibility Criteria**

- A. The Department shall determine if a child qualifies for the Title IV-E adoption assistance program prior to determining whether the child qualifies for the Adoption Subsidy Program.
- B. A child shall qualify for Title IV-E adoption assistance if the child meets the additional eligibility criteria required in 42 U.S.C. 673(a)(2). If the child does not meet the additional criteria in Title IV-E, the child may still be eligible to receive adoption subsidy under subsection (C).
- C. An Arizona child shall be eligible for adoption subsidy when the child is:
  1. In the care, custody, and control of the Department, or an adoption agency licensed in Arizona, or was previously adopted and received Title IV-E or Arizona adoption subsidy;
  2. Legally free for adoption;
  3. Lawfully present in the United States; and
  4. Determined to be a child with special needs as defined by Title IV-E of the Social Security Act, and A.R.S. Title 8, Chapter 1, Articles 2 and 3 as follows:
    - a. The child cannot or should not be returned to the parent's home;
    - b. The child cannot be placed with adoptive parents without an adoption subsidy due to a special need of the child; and
    - c. A reasonable but unsuccessful effort was made to place the child without an adoption subsidy, unless the Department determined that it was not in the child's best interest to place the child with another family because of the child's significant emotional ties with the prospective adoptive parent while in their care as a foster child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-503. Application for Adoption Subsidy**

- A. The adoptive parent shall submit a complete adoption subsidy application to the Department Adoption Subsidy Program prior to the finalization of the adoption. A complete adoption subsidy application shall include the following:
  1. The child's:
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number; and
    - d. Ethnicity;
  2. The adoptive parents':
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number;
    - d. Ethnicity;
    - e. Marital status;
    - f. Occupation;
    - g. Relationship to the child;
    - h. Adoption certification status;
  3. Information about:
    - a. The child's special needs;
    - b. Whether the child is lawfully present in the U.S.;
    - c. The Department or the adoption agency that has custody of the child;
    - d. Whether the child is free for adoption;
    - e. Efforts to place the child for adoption without adoption subsidy;
    - f. Resources for which the child is eligible; and
    - g. Financial benefits for which the child is eligible; and
  4. Description of:
    - a. The child's pre-existing special need conditions;
    - b. The need for maintenance payments; and
    - c. Nonrecurring expenses.
  5. The adoptive parent shall include the following documentation:
    - a. The child's specific special need identified by a qualified professional;
    - b. The child's need for a maintenance subsidy from:
      - i. The adoptive parent,
      - ii. Adoption Specialist, and
      - iii. A qualified professional;
    - c. The child's lawful presence in the United States if the child is not a U.S. citizen;
    - d. The child's pre-existing medical, dental, and mental health conditions as documented by a qualified professional:
      - i. Current within one year, or
      - ii. Provided in birth records; and
  6. Assurances that the following information is available in the adoption case record:
    - a. The Department or adoption agency that has custody of the child,

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- b. That the child is free for adoption, and
  - c. Efforts to place the child for adoption without adoption subsidy.
- B.** An adoption subsidy application is complete when the Adoption Subsidy Program receives the application and all supporting documentation. Documentation may vary according to the conditions of the child, and may include the recommendations of qualified professionals.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-504. Eligibility Determination**

The Department shall review the adoption subsidy application and determine eligibility according to the following:

1. The Department shall approve eligibility for adoption subsidy if a child meets the eligibility criteria listed in R21-5-502 and the adoptive parent submits a complete application. If the Department approves eligibility, the Department shall create an adoption subsidy agreement that the adoptive parent and the Adoption Subsidy Supervisor or designee shall sign before the court enters the final order of adoption.
2. The Department shall deny eligibility for an adoption subsidy if a child does not meet the eligibility criteria listed in R21-5-502. If the Department denies an adoption subsidy, the Department shall send a notice to the adoptive parent that explains the reason for denial, the applicant's right to appeal, and the time-frame to file an appeal.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-505. Adoption Subsidy Agreement**

- A.** The Department shall create an adoption subsidy agreement that lists the scope and nature of the subsidies provided, including:
1. The child's documented pre-existing special needs condition,
  2. The types of subsidy approved,
  3. The amount or rates as applicable to the types of subsidy approved, and
  4. The specific terms and conditions of the agreement.
- B.** The adoption subsidy agreement shall become effective if the following occurs prior to the finalization of the adoption:
1. The adoptive parent signs the agreement and returns it to the Department Adoption Subsidy Program, and
  2. The Adoption Subsidy Supervisor or designee signs the agreement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-506. Medical, Dental, and Mental Health Subsidy**

Adoption subsidy provides medical, dental, and mental health subsidies in the form of federal Medicaid coverage to a child in the Adoption Subsidy Program.

1. If the child resides in Arizona, AHCCCS determines eligibility; or
2. If the child resides in another state, the relevant state agency in that state determines Medicaid eligibility.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-507. Maintenance Subsidy**

- A.** The maintenance subsidy may not cover all the daily living expenses of the adopted child. The Department and the adoptive parent shall negotiate the amount of maintenance subsidy based on a child's current special needs and the family's circumstances.

1. Under A.R.S. § 8-144(B), the amount of the maintenance subsidy shall not exceed the payments allowable for foster care, not including foster care special allowances.
2. The Department shall deduct private or public monetary benefits, such as benefits received through Title II of the Social Security Act, paid to the child from the monthly maintenance subsidy, as allowed under state or federal law. The adoptive parent shall report the receipt of any private or public monetary benefits for the child to the Adoption Subsidy Program as soon as the benefits are received.

**B. Payment of Maintenance Subsidy**

1. The Department shall not begin maintenance subsidy payments prior to the effective date of the adoption subsidy agreement.
2. The Department shall issue maintenance subsidy payments monthly to the adoptive parent as specified in the adoption subsidy agreement.

**C. Renegotiation of the Maintenance Rate**

1. The Department or the adoptive parent may initiate a change in the maintenance subsidy rate if there are changes in the child's needs.
2. The Department may renegotiate the amount of the adoption subsidy; however, the rate shall not exceed the payments allowable for foster care, not including foster care special allowances.
3. The adoptive parent shall provide the Department with documentation supporting the requested change in the maintenance subsidy rate.
4. If the child is in the care or custody of a state agency in Arizona or any other state, an adoption agency, or an individual other than the adoptive parent, the Department shall request, and the adoptive parent shall provide, documentation that the adoptive parent continues to be legally and financially responsible for the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-508. Special Services Subsidy**

- A.** Special services subsidy shall be:
1. Related to a special needs condition listed in the adoption subsidy agreement; and
  2. Necessary to improve or maintain the adopted child's functioning as documented by an appropriate qualified professional. The Adoption Subsidy Program shall review the documentation at least annually.
- B.** Services approved for the payment of special services subsidy shall be:
1. Provided by a qualified professional;
  2. Provided in the least restrictive environment and as close as possible to the adoptive parent's residence;
  3. In accordance with the "Standard of Care"; and
  4. Not otherwise covered by or provided through maintenance subsidy, medical subsidy, dental subsidy, mental health subsidy, or other resources for which the adopted child is eligible.
- C.** The adoptive parent shall submit the special services request to the Adoption Subsidy Program and receive approval from the

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Adoption Subsidy Program prior to the adoptive parent's incurring the specified expense. The request shall include:

1. Documentation from a qualified professional that the service is necessary; and
  2. Documentation that the adoptive parent had requested the service and the service provider had denied the request or documentation that the service is not available from other potential funding sources, such as AHCCCS/Medicaid, private insurance, school district, or other community resources.
- D.** Special services subsidy shall not include:
1. Payment for services to meet needs other than the pre-existing special needs conditions specifically listed in the adoption subsidy agreement;
  2. Payment for medical or dental services usually considered to be routine, such as well-child checkups, immunizations, and other services not related to the child's special needs conditions in the adoption subsidy agreement;
  3. Payment for health-related services that are not medically necessary, as determined by a qualified professional;
  4. Payment for social or recreational services such as routine child care, dance lessons, sports fees, camps, and similar services; and
  5. Payment for educational services that are not necessary to meet the special needs conditions specifically listed in the adoption subsidy agreement, or the services for which the school district is responsible.
- E.** The Department may request an independent review by a qualified professional of a special services request to determine the necessity for medical, dental, psychological, or psychiatric testing or services, or to evaluate the appropriateness of the treatment plan or placement.
- F.** The Department may issue reimbursements to the adoptive parent for approved special services, or the Department may pay the service provider directly.
- G.** Special services subsidy reimbursement is limited as follows:
1. The Department shall reimburse in-state and out-of-state inpatient and outpatient hospital services according to the AHCCCS hospital reimbursement system, as required by A.R.S. § 8-142.01(A), if the adoptive parent has obtained prior approval for the service from the Department. Prior approval is not required in an emergency situation.
  2. The Department shall not reimburse special services subsidy amounts in excess of the rates allowed by the Department or AHCCCS. The Department shall use the lowest applicable rates as established by AHCCCS, the Department's Comprehensive Medical and Dental Program (CMDP), or rates established by the Adoption Subsidy Program to be customary and reasonable.
  3. The Department shall not pay for requests that the adoptive parent or provider submits more than nine months after the date of service for which the adoptive parent or provider requests payment.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-509. Nonrecurring Adoption Expenses**

- A.** Nonrecurring adoption expenses shall not cover expenses related to visiting and placing the child.
- B.** Reimbursement of nonrecurring adoption expenses is subject to the limitations in A.R.S. § 8-164.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-510. Annual Review; Reporting Change**

- A.** Each year, the Department shall send a review form to the adoptive parent requesting that the adoptive parent provide:
  1. Information indicating that the parent remains legally and financially responsible for the child;
  2. Information on any change in benefits for the child, such as benefits received through Title II of the Social Security Act;
  3. Information on any change in circumstances, including changes in residence, marital status, educational status, or other similar changes; and
  4. A description of any changes in the child's special needs conditions that are listed in the adoption subsidy agreement.
- B.** The adoptive parent shall provide the Department with the requested information within 30 days of the adoptive parent's receipt of the review form.
- C.** The adoptive parent shall notify the Department in writing within five calendar days when any of the following occurs:
  1. The adoptive parent is no longer legally responsible for the child;
  2. The adoptive parent is no longer providing support to the child;
  3. The child is no longer residing in the adoptive parent's home;
  4. The child has graduated from high school or obtained a general equivalency degree (GED);
  5. The child has married;
  6. The child has joined the military; or
  7. The child dies.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-511. Termination of Adoption Subsidy**

The Department shall terminate an adoption subsidy when any of the following occurs:

1. The child turns 18 years old and is not enrolled in and attending high school or a program leading to a high school diploma or general equivalency degree (GED);
2. The child is aged 18 through 21 years, has been continuously enrolled in school, and either drops out of school, graduates from high school, or obtains a general equivalency degree (GED);
3. The child turns 22 years old;
4. The adoptive parent is no longer legally responsible for the child;
5. The adoptive parent is no longer providing support to the child;
6. The child marries;
7. The child joins the military;
8. The special needs conditions of the child no longer exist;
9. The child dies;
10. The adoptive single parent or both adoptive parents die; or
11. The adoptive parent requests termination.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-512. New or Amended Adoption Subsidy Agreement**

An adoptive parent may apply for a new or amended adoption subsidy agreement after the adoption is final, only upon documentation of an undiagnosed pre-existing special needs condition that existed before the finalization of the adoption.

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

1. The adoptive parent shall send the Department a written request for adoption subsidy with documentation from a qualified professional diagnosing the special needs condition and confirming that it existed before the final order of adoption.
2. The adoptive parent and the Department shall follow the procedures in this Article for processing applications and determining eligibility.
3. If the Department finds that the child has an undiagnosed pre-existing special needs condition that, if diagnosed prior to the adoption, would have met the eligibility criteria listed in R21-5-502, the Department shall grant a new subsidy or amend the adoption subsidy agreement to cover this special needs condition.

**Historical Note**

New Section made by final exempt rulemaking at 21

A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-513. Appeals**

Appeals for the Adoption Subsidy Program shall follow the process in 21 A.A.C. 1, Article 3.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-514. Confidentiality**

The Department shall maintain the confidentiality of all information used in the Adoption Subsidy Program according to all applicable federal and state laws.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, 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.

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.

#### 8-548. Enactment of compact; terms

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

#### ARTICLE II. DEFINITIONS

As used in this compact:

- (a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.
- (b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

### ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

### ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child

in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

#### ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

#### ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

## ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

## ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

- (a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.
- (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

## ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

## ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### 8-548.01. Financial responsibility

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article V.

#### 8-548.02. Interstate compact administrator

Pursuant to the compact the governor shall designate the director of the department as the compact administrator. The compact administrator, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

#### 8-548.03. Supplementary agreements

The compact administrator shall have authority to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement requires or contemplates the use of any institution or facility of this state or requires or contemplates the provision of any service by this state, the supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of the service.

#### 8-548.04. Financial arrangements

The compact administrator, subject to the approval of the director of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

#### 8-548.05. Visitation, inspection and supervision

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections 8-501, 8-503 through 8-520 and 8-813 shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state as contemplated by paragraph (b) of article V of the interstate compact on the placement of children.

#### 8-548.06. Responsibilities of state departments, agencies and officers

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

**PHYSICIAN ASSISTANTS BOARD (F20-0504)**

Title 4, Chapter 17, Articles 1-4, Arizona Regulatory Board of Physician Assistants



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT:** Arizona Regulatory Board of Physicians Assistants  
Title 4, Chapter 17

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This Five-Year-Review report from the Board of Physicians Assistants relates to rules in Title 4, Chapter 17. The report covers the following:

**Article 1** - General Provisions

**Article 2** - Physician Assistant Licensure

**Article 3** - Duties of the Executive Director

**Article 4** - Regulation

In the last 5YRR of these rules the Board proposed to amend a number of its rules. The Board completed a rulemaking that went into effect February 6, 2017.

### **Proposed Action**

The Board is proposing to amend to create a rule, under A.R.S. 32-2505 (E), that allows the Board to hear requests for review of a delegated action made by the Executive Director. The Board also plans to amend three rules; R4-17-203(A)(5)(c), R4-17-203(A)(5)(m), and R4-17-203(B)(3), to improve clarity, consistency, and understandability. The Board plans to complete the proposed course of action by December 2020.

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:**

Stakeholders are identified as the Regulatory Board of Physician Assistants, Board of Pharmacy, Physician Assistant applicants and licensees, and the general public.

The Board has received no information since June 2, 2015, when the Council approved the Board's last 5YRR, that causes the Board to believe its previous assessment of the economic, small business, and consumer impact of the rules is incorrect.

In the last 5YRR, the Board determined that the discontinuation of providing licensees wallet cards had annually saved the Board \$6,500. In addition, the Board stopped collecting an \$8 convenience fee for online application renewals to provide incentive to licensees to renew their licenses online, which saves the licensing staff time. In 2014, 93 percent of applicants renewed their licenses online. Today, the online renewal rate is 89 percent, which is less than the 100 percent wanted.

Two rulemakings have been completed since the last 5YRR, but because both these rulemakings were made to make the rules consistent with statute, the rules themselves have minimal economic impact.

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 rules impose minimal costs and burdens on applicants and licensees and are necessary to enable the Board to protect the public by licensing and regulating physician assistants. The minimal costs and burdens are considerably outweighed by the opportunity to be employed as a physician assistant as evidenced by the increasing number of individuals who seek licensure from the Board – 2,495 Physician Assistants licensed in 2015 compared with 3,588 currently licensed.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates they haven't received any written criticisms on the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Board indicates the rules for the most part are clear, concise, understandable, effective and consistent with other rules and statutes, with the exception of R4-14-203.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Boardt indicates the rules are enforced as written.

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

Not applicable, there is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit or license.

9. **Conclusion**

As mentioned above, the Board plans to create a new rule and amend three other rules to improve clarity, understandability, and conciseness. The Board plans to complete the changes by December 2020. Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

**Arizona Regulatory Board of  
Physician Assistants**

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Myles Whitfield, PA-C  
Chair

March 2, 2020

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

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

**RE: Arizona Regulatory Board of Physician Assistants  
4 A.A.C. 17, Articles 1 through 4**

Dear Ms. Sornsins:

Please find enclosed the Five-year-review Report of the Arizona Regulatory Board of Physician Assistants for 4 A.A.C. 17, Articles 1 through 4, which is due under an extension on March 29, 2020.

The Arizona Regulatory Board of Physician Assistants certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Patricia McSorley, Executive Director, at 480-551-2700 or [patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov).

Sincerely,

A handwritten signature in cursive script that reads "Patricia McSorley".

Patricia McSorley  
Executive Director

**Five-year-review Report**  
**A.A.C. Title 4. Professions and Occupations**  
**Chapter 17. Arizona Regulatory Board of Physician Assistants**  
**Submitted for May 5, 2020**

INTRODUCTION

The Arizona legislature recognized Physician Assistants in law in the early 1970s. Physician Assistants were believed to be a way to address health care in rural and underserved areas. In 1984, the legislature established the Joint Board on the Regulation of Physicians Assistants to define the Physician Assistant regulatory program. In 2002, the legislature changed the Board's name to the Arizona Regulatory Board of Physician Assistants. Under A.R.S. § 32-2504(A)(1), the Board's primary duty is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional Physician Assistants.

The executive director employed by the Arizona Medical Board and all of its staff carry out the administrative responsibilities of the Regulatory Board of Physician Assistants.

Statute that generally authorizes the agency to make rules:      A.R.S. § 32-2504(C)

1. Specific statute authorizing the rule:

R4-17-101. Definitions: A.R.S. Title 32, Chapter 25

R4-17-102. Time-frames for Licenses and Approvals: A.R.S. §§ 41-1072 through 41-1079

Table 1. Time Frames (in days): A.R.S. §§ 41-1072 through 41-1079

R4-17-202. Examination: A.R.S. § 32-2521(A)(2)

R4-17-203. Regular License Application: A.R.S. §§ 32-2521 and 32-2522

R4-17-204. Fees and Charges: A.R.S. § 32-2526

R4-17-205. Continuing Medical Education; Request for Extension of Time: A.R.S. § 32-2523(A)

R4-17-206. License Renewal: A.R.S. § 32-2523

R4-17-207. Denial of License or Extension to Complete Continuing Education: A.R.S. §§ 32-2522(I), 32-2523(E), and 41-1092.03

R4-17-301. Dismissal of Complaint: A.R.S. §§ 32-2504(B) and 32-2505(C)(19)

R4-17-302. Referral to Formal Hearing: A.R.S. §§ 32-2504(B) and 32-2505(C)(20)

R4-17-303. Non-disciplinary Consent Agreement: A.R.S. § 32-2504(B)

R4-17-304. Request for Inactive Status and License Cancellation: A.R.S. § 32-2504(B)

R4-17-305. Referral to Formal Interview: A.R.S. §§ 32-2504(B) and 32-2505(C)(25)

R4-17-306. Denial of License: A.R.S. § 32-2504(B)

R4-17-403. Rehearing or Review: A.R.S. § 41-1092.09

2. Objective of the rules:

R4-17-101. Definitions: The objective of the rule is to define terms used in the rules that are not explained adequately by a dictionary definition.

R4-17-102. Time-frames for Licenses and Approvals: The objective of this rule is to specify the time frames within which the Board will act on a license or renewal application.

Table 1. Time Frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license or renewal application.

R4-17-202. Examination: The objective of this rule is to provide information to applicants regarding the examination that must be passed to obtain licensure and the requirement to be certified by the NCCPA at the time of application.

R4-17-203. Regular License Application: The objective of this rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties.

R4-17-204. Fees and Charges: The objective of the rule is to specify the fees the Board charges for its licensing activities and the other charges made for specified Board services.

R4-17-205. Continuing Medical Education; Request for Extension of Time: The objective of this rule is to reiterate the statutory requirement that a licensee complete 40 hours of category I continuing medical education during each biennial period and specify the manner in which a licensee may request an extension of time to complete the required continuing medical education.

R4-17-206. License Renewal: The objective of this rule is to specify the requirements for license renewal and the manner in which renewal application is made.

R4-17-207. Denial of License or Extension to Complete Continuing Education: The objective of this rule is to provide notice of the right to appeal certain Board actions, the time within which an appeal must be made, and the procedure the Board will use to conduct an appeal hearing.

R4-17-301. Dismissal of Complaint: The objective of the rule is to specify the circumstances under which the executive director may dismiss a complaint.

R4-17-302. Referral to Formal Hearing: The objective of the rule is to specify the circumstances under which the executive director may directly refer a case for formal hearing.

R4-17-303. Non-disciplinary Consent Agreement: The objective of the rule is to specify the circumstances under which the executive director may enter into a non-disciplinary consent agreement with a physician assistant.

R4-17-304. Request for Inactive Status and License Cancellation: The objective of the rule is to specify the conditions under which the executive director shall grant a request for inactive status of license cancellation.

R4-17-305. Referral to Formal Interview: The objective of the rule is to specify requirements for referral of a case to a formal interview.

R4-17-306. Denial of License: The objective of the rule is to specify the standards for the executive director to deny a license to an applicant.

R4-17-403. Rehearing or Review: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

3. Are the rules effective in achieving their objectives? Yes
4. Are the rules consistent with other rules and statutes? Yes  
However, the Board intends to make a rule about the Board’s authority under A.R.S. § 32-2505(E) to hear requests for review of a delegated action by the executive director. This rule will be comparable to the Medical Board rule at R4-16-510, Appealing Executive Director Actions.
5. Are the rules enforced as written? Yes
6. Are the rules clear, concise, and understandable? Mostly yes  
Although the rules are generally clear, concise, and understandable, staff believes the following changes would improve clarity:  
R4-17-203(A)(5)(c): Change the phrase “...in a medical school...” to “...in a physician assistant program...”  
R4-17-203(A)(5)(m) and R4-17-206(A)(2)(h): Change the phrase “...branch of military service...” to “...component of the uniformed services of the United States...”  
R4-17-203(B)(3): In both places, insert “health professions educational institution” following “health professionals.”
7. Has the agency received written criticisms of the rules within the last five years? No  
Comments received regarding each rulemaking were addressed during the rulemaking process. No additional comments have been received.
8. Economic, small business, and consumer impact comparison:

The Board has received no information since June 2, 2015, when the Council approved the Board's last 5YRR, that causes the Board to believe its previous assessment of the economic, small business, and consumer impact of the rules is incorrect. At the time of the June 2, 2015, 5YRR, the Board had achieved an online renewal rate of approximately 93 percent, which was less than the 100 percent wanted. Today, the online renewal rate is 89 percent.

### February 2017 rulemaking

In the rulemaking that went into effect on February 6, 2017, the Board amended six of its rules and made a new Article of rules addressing the Board's delegation of ministerial activities to the executive director. The economic, small business, and consumer impact statement from that rulemaking was available for review. In the 2017 rulemaking, the Board:

- Amended the rules to provide for biennial license renewal and adjusts the continuing education and renewal fees accordingly;
- Amended R4-17-202 to be consistent with the 10-year renewal of certification required by NCCPA;
- Amended R4-17-203 to request documentation relating to malpractice actions earlier in the application process;
- Amended R4-17-204 and R4-17-206 to ensure provisions are consistent with the Americans with Disabilities Act;
- Amended R4-17-203 and R4-17-206 regarding the responsibility of a physician assistant who registers under the Controlled Substances Act to register also with the Board of Pharmacy and obtain access to the Controlled Substances Prescription Monitoring Program Database;
- Made new Sections memorializing the duties the Board has delegated to the executive director;
- Amended Table 1 to make the time frame regarding license renewal consistent with A.R.S. § 32-2523(C). The Board also reduced the time for an applicant to respond to a request for additional information during the substantive review time frame.

Because the rulemaking simply made the rules consistent with recent statutory changes, the Americans with Disabilities Act, and recent changes made by the NCCPA, which is a national organization that certifies physician assistants, the Board expected the rulemaking to have minimal economic impact on applicants and licensees.

There are currently 3,588 licensed physician assistants in Arizona. Last year, initial applications were received from 355 individuals. Placing in rule the duties the Board delegated to the executive director was expected to enable the Board to operate in a more efficient and cost effective manner while providing quality service to applicants and licensees. During the last year, the executive director took 42 actions under the authority delegated to her. Seventy-nine percent of these actions were dismissing complaints against a physician assistant. Twenty percent involved acting on a request to have a license inactivated or cancelled.

April 2019 rulemaking

In a rulemaking that went into effect in April 2019, the Board amended R4-17-203 to make it consistent with a statutory change authorizing a physician assistant with prescribing authority for schedule II or schedule III controlled substances that are not an opioid or benzodiazepine to prescribe a 90-day supply rather than the then-current 30-day supply (98 percent of licensees have authority to prescribe schedule II or III controlled substances). Because the rulemaking simply made the rule consistent with statute, the Board correctly estimated the rule would have minimal economic impact beyond the economic impact of statute.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Mostly yes

In a 5YRR approved by Council on June 2, 2015, the Board indicated it would amend Table 1, and R4-17-202 through R4-17-206. A rulemaking that went into effect on February 6, 2017 (See 22 A.A.R. 3700) made the needed changes. The Board did not complete a rulemaking amending R4-17-207 or R4-17-403 because it determined the incorrect references in those rules did not interfere with the understandability of the rules.

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

Most of the costs associated with being a physician assistant in Arizona, including paperwork and other compliance costs result from statute rather than rule. For example:

A.R.S. § 32-2501 defines 41 actions as unprofessional conduct and A.R.S. § 32-2551 lists multiple disciplinary and non-disciplinary actions the Board is authorized to take against the license of a physician assistant. During the last year, 97 complaints were opened against physician assistants alleging issues with quality of care, malpractice settlements, and unprofessional conduct. One case was referred to formal hearing but settled before the hearing. Five cases resulted in disciplinary action.

A.R.S. § 32-2521 prescribes the qualifications an individual must possess to be licensed and requires that an examination approved by the Board be passed.

A.R.S. § 32-2522(A) requires an applicant to submit an application and pay an application fee. The attached table shows licensing fees for physician assistants in each state. Arizona fees, which have not been increased since first placed in rule in 2012, are neither the highest nor the lowest. The Board believes the fees are reasonable and necessary.

A.R.S. § 32-2523 requires a license be renewed biennially and the licensee complete 40 hours of continuing medical education provided by entities specified in statute. As allowed under statute (A.R.S. § 32-2523(F)), Arizona allows a physician assistant certified by NCCPA (approximately 82 percent of licensees) to meet the continuing education requirement by affirming ongoing certification.

A.R.S. § 32-2527 requires a licensee to report to the Board a change in contact information.

A.R.S. § 32-2528 requires a licensee to obtain Board approval before placing the license on inactive status. During the last year, eight licensees requested license inactivation or cancellation.

A.R.S. § 32-2531 prescribes a licensee's scope of practice. A physician assistant is required to work under the supervision of a physician (See A.R.S. § 32-2501(13)) and can perform only the health care tasks delegated by the supervising physician.

A.R.S. § 32-2532 specifies the information a licensee must include on a prescription order, requires Board approval to prescribe controlled substances, and requires a licensee to maintain a log of all controlled substances prescribed or dispensed.

The rules:

Specify the examination approved by the Board (R4-17-202). The Board has approved two examinations used nationally.

Outline the information included in the required application for licensure (R4-17-203) or application for renewal (R4-17-206).

Inform a licensee how to obtain an extension of time to complete continuing medical education (R4-17-205).

Establish fees consistent with the statutory maximums (R4-17-204). In response to Executive Order 2017-03 requiring regulatory agencies to conduct internal reviews of their training requirements, continuing education, fees, and processes, the Board determined its application fee is approximately \$57 less than the national average.

All states require physician assistants be licensed after graduating from an accredited physician assistant program. Unlike some states, Arizona does not require a physician assistant have a baccalaureate degree. All states require passage of an examination offered by a national certifying organization. Half the states require an applicant to hold current certification. Arizona does not require the certification be maintained following licensure although approximately 82 percent of licensees do so.

The rules impose minimal costs and burdens on applicants and licensees and are necessary to enable the Board to protect the public by licensing and regulating physician assistants. The minimal costs and burdens are considerably outweighed by the opportunity to be employed as a physician assistant as evidenced by the increasing number of individuals who seek licensure from the Board.

12. Are the rules more stringent than corresponding federal laws? No

There are no federal laws specifically applicable to licensure and regulation of physician assistants. There are numerous federal laws relating to the provision of health care but the laws are not applicable to the Board's rules.

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

The Board's statutes (See A.R.S. §§ 32-2521 and 32-2523), require individualized licenses be issued so a general permit is not applicable.

14. Proposed course of action:

The Board intends to complete a rulemaking regarding the issues identified in items 4 and 6 before the end of December 2020.

Type of License	PA Application	PA Initial License prorated (activation fee)	PA Renewal	Late Renewal Fee
AL	200		100 *	
AK	200	prorated by 2yr renewal fee	250**	
AZ	125	prorated by 2yr renewal fee	370**	100
AR	80		50*	25 per delinquent year
CA	25	200	300**	
CO	240		173**	15
CT	190		150*	
DE	203		203**	101.5
FL	100		275**	100
GA	300		105**	100
HI	182(odd yr) 107(even yr)		150**	150
ID	100	50	50*	
IL	50		80**	20
IN	100		50	
IA	120		120**	60
KS	200		150*	215(paper) 208(online)
KY	100		150**	50
LA	250		150*	
ME	200	prorated	200**	
MD	200		135	
MA	225		150	57
MI	30		50*	
MN	120		135*(prescribing) 115*(nonprescribing)	50
MS				
MO	25		25*	25
MT	500		300**	300
NE	150		110**	
NV	400		800**	
NH	115		65*	130
NJ	220(1st yr of renewal) 110(2nd yr of renewal)		220**	100
NM	150		150**	50(3/1 thru 4/15) 75(4/15 thru 5/30)
NY	115		45***	
NC	230		140*	165
ND	50		50*	150
OH	400		200**	
OK	150	50	125*	100
OR	293		432**	195
PA	30		40**	
RI	110		110**	
SC	120		45**	
SD	75		100*	
TN	75		175**	50
TX	220		541**(Initial renewal) 537**(subsequent renewal)	
UT	180		123**	
VT	225		215**	25(each month after)
VA	130		135**	50
WA	50		247**	124
WV	250		150**	
WI	150		75**	25
WY	250 275(paper app)		90* 100*(paper renewal)	50
DC	230		145**	85

\* 1yr renewal  
\*\* 2yr renewal  
\*\*\* 3yr renewal

March 31, 2019

(Authority: A.R.S. § 32-2504)

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-17-101. Definitions  
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**ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE**

Section

R4-17-202. Examination  
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**ARTICLE 3. DUTIES OF THE EXECUTIVE DIRECTOR**

*New Article 3, consisting of Sections R4-17-301 through R4-17-306, made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).*

Section

R4-17-301. Dismissal of Complaint  
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R4-17-302. Referral to Formal Hearing  
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R4-17-303. Non-disciplinary Consent Agreement  
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R4-17-304. Request for Inactive Status and License Cancellation  
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R4-17-305. Referral to Formal Interview  
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**ARTICLE 4. REGULATION**

Section

R4-17-403. Rehearing or Review ..... 7

**ARTICLE 1. GENERAL PROVISIONS**

**R4-17-101. Definitions**

For the purposes of A.R.S. Title 32, Chapter 25 and this Chapter:

1. "Ability to perform health care tasks authorized by A.R.S. § 32-2531" means:
  - a. The cognitive capacity to make clinical diagnoses and exercise medical judgments and to learn and keep abreast of medical developments through the completion of continuing medical education,
  - b. The ability to communicate medical judgments and medical information to patients and other professionals, and
  - c. The physical capability to perform the health care tasks authorized by A.R.S. § 32-2531.
2. "Applicant" means an individual seeking a regular license or renewal license.
3. "Category I" means a designation given to a continuing medical education activity provided by an institution or organization that has been accredited for continuing medical education by the:

- a. Accreditation Council for Continuing Medical Education,
  - b. American Medical Association,
  - c. American Academy of Physician Assistants,
  - d. American Osteopathic Association,
  - e. Accreditation Council for Continuing Medical Education,
  - f. Accreditation Review Commission on Education for Physician Assistants, or
  - g. Commission on the Accreditation of Allied Health Education Programs.
4. "Controlled Substance" means the same as in A.R.S. § 32-1901.
  5. "Dispense" means the same as in A.R.S. § 32-1901.
  6. "Drug" means the same as in A.R.S. § 32-1901.
  7. "Health care institution" means the same as in A.R.S. § 36-401.
  8. "Health professional" means the same as in A.R.S. § 32-3201 or its equivalent in another state.
  9. "Health profession regulatory authority" means a state or federal entity that issues and regulates health professional licenses.
  10. "NCCPA" means the National Commission on the Certification of Physician Assistants.
  11. "PANCE" means the Physician Assistant National Certifying Examination.
  12. "PANRE" means the Physicians Assistants National Recertification Examination.
  13. "Prescribe" means to issue:
    - a. A signed, written order to a pharmacist for drugs or medical devices; or
    - b. An order transmitted to a pharmacist by word of mouth, telephone, or other means of communication.
  14. "Privileges" means the authority granted by a health care institution to a physician or physician assistant to practice medicine at the health care institution.
  15. "Service" means personal delivery or mailing by certified mail to a physician assistant, supervising physician, or applicant affected by a decision of the Board at the physician assistant's, supervising physician's, or applicant's last known residence or place of business.
  16. "State fiscal year" means from July 1 of one calendar year to June 30 of the next calendar year.
  17. "Substance use disorder" means the maladaptive pattern of the use of a drug, alcohol, or chemical leading to effects that are detrimental to an individual's physical or mental health.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**R4-17-102. Time-frames for Licenses and Approvals**

- A. The overall time-frame described in A.R.S. § 41-1072(2) for a regular license or renewal license is set forth in Table 1.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board receives an application.
  1. If the application is not administratively complete, the Board shall send a deficiency notice to the applicant.
    - a. The deficiency notice shall state each deficiency and the information needed to complete the application.
    - b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Board the missing information specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
    - c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.
  2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.
  1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the request until the Board receives the information.
  2. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.

3. The Board shall issue a written notice of denial of a license or license renewal if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter for licensure or license renewal.
  4. If the applicant meets all of the substantive criteria required by statute and this Chapter for a license or license renewal, the Board shall issue the license or license renewal to the applicant.
- D.** In computing any period of time prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays, and holidays. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the date of mailing.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**Table 1. Time Frames (in days)**

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	90
License Renewal R4-17-206	75	30	60	45	60

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE**

**R4-17-202. Examination**

An applicant for a regular license as a physician assistant shall pass the PANCE or PANRE and be certified by the NCCPA at the time of application for licensure.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section R4-17-202 renumbered from R4-17-201 and amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-203. Regular License Application**

- A.** An applicant for a regular license shall submit a completed application to the Board that includes:
  1. The applicant's:
    - a. First, last, and middle name;
    - b. Every other name used by the applicant;
    - c. Social Security number;
    - d. Office, mailing, e-mail, and home addresses;
    - e. Office, mobile, and home telephone numbers; and
    - f.

- Birth date and state or country of birth;
2. The name and address of the approved program completed by the applicant and the date of completion;
  3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;
  4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program or for 10 continuous years before the date the application was submitted to the Board and if not, an explanation;
  5. A questionnaire that includes answers to the following:
    - a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
    - b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
    - c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved program in a medical school or a postsecondary educational program, and if so, an explanation;
    - d. Whether, while attending an approved program, the applicant has ever had any action taken against the applicant by the approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
    - e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
    - f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
    - g. Whether the applicant is currently under investigation by any health profession regulatory authority, health care association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
    - h. Whether the applicant has ever had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
    - i. Whether the applicant has ever had a federal or state regulatory authority take any action against the applicant's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant ever surrendered the authority in lieu of any of these actions, and if so, an explanation;
    - j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
    - k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;
    - l. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a judgment or settlement entered against the applicant, and if so, an explanation;
    - m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
    - n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;
    - o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and
    - p. Whether the applicant, within the three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;
  6. A confidential questionnaire that includes answers to the following:
    - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
    - b. If the answer to subsection (A)(6)(a) is yes:
      - i. A detailed description of the use, disorder, or condition; and
      - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current

- treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
- c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable;
7. Consistent with the Board's statutory authority, other information the Board may deem necessary to evaluate the applicant fully; and
  8. A sworn statement that complies with A.R.S. § 32-2522(C).
- B.** In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:
1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;
  2. Documentation of a legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
  3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional's or health care institution's name, address, and dates of employment;
  4. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may submit a written request for a waiver of the requirement. The applicant shall include the following information in a request for waiver:
    - a. The document for which waiver is requested;
    - b. Detailed description of efforts made by the applicant to provide the required document; and
    - c. Reason the applicant's inability to provide the required document is due to no fault of the applicant; and
  5. The fee required in R4-17-204.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:
1. A copy of the applicant's certificate of successful completion of the PANCE or PANRE and the applicant's examination score provided by the NCCPA;
  2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
    - a. Applicant's full name,
    - b. Type of degree earned by the applicant,
    - c. Name of the physician assistant program completed by the applicant,
    - d. Starting and ending dates, and
    - e. Date the applicant's degree was granted.
- D.** The Board's issuance of a regular license to an applicant certifies the applicant to issue, dispense, or administer schedule II or schedule III controlled substances, subject to the limits and requirements specified in A.R.S. § 32-2532. Additionally, beginning October 1, 2018, a physician assistant previously certified by the Board for 30-day prescription privileges for schedule II or schedule III controlled substances is certified for 90-day prescription privileges for schedule II or schedule III controlled substances that are not opioids or benzodiazepine.

#### **Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 401, effective April 6, 2019 (Supp. 19-1).

#### **R4-17-204. Fees and Charges**

- A.** As expressly authorized under A.R.S. § 32-2526(A), the Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
1. License application - \$125.00;
  2. Regular license - \$370.00, prorated for each month remaining in the biennial period;
  3. Regular license renewal - \$370.00 if the renewal application is postmarked no later than the applicant's birthdate; and
  4. Penalty for late renewal - \$100.00.
- B.** As expressly authorized under A.R.S. § 32-2526(B), the Board establishes the following charges for providing the services listed:
1. Duplicate license - \$25.00;

2. Copies of Board documents - \$1.00 for first three pages, \$.25 for each additional page;
3. Medical Directory (CD-ROM) - \$30.00;
4. Data Disk - \$100.00; and
5. License verification - \$10.00.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-205. Continuing Medical Education; Request for Extension of Time**

- A. Under A.R.S. § 32-2523(A), renewal of a license is conditioned on the licensee completing 40 hours of category I continuing medical education during each biennial license period.
- B. During a licensee’s first biennial license period, the licensee may complete a pro-rated number of continuing medical education hours established by the Board.
- C. A licensee who is unable to complete the required hours of continuing medical education for any of the reasons in A.R.S. § 32-2523(E) may submit a written request to the Board for an extension no later than 30 days before expiration of the license that contains:
  1. The name, address, and telephone number of the licensee;
  2. The reason for the request;
  3. The number of continuing medical education hours completed during the biennial license period;
  4. The dates on which the remaining hours of continuing medical education are scheduled to be completed; and
  5. The signature of the licensee.
- D. The Board shall send a written notice of approval of the extension within seven days from the date of receipt of the request if the Board determines:
  1. The extension is needed for a reason specified in A.R.S. § 32-2523(E),
  2. The remaining hours of continuing medical education are scheduled to be completed within 30 days, and
  3. The extension is in the best interest of the state.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-206. License Renewal**

- A. To renew a license, a licensee shall submit a completed application to the Board that includes:
  1. An application form that contains the licensee’s:
    - a. First, last, and middle names;
    - b. Arizona license number;
    - c. Office, mailing, e-mail, and home addresses;
    - d. Office, mobile, and home telephone numbers;
  2. A questionnaire that includes answers to the following since the last renewal date:
    - a. Whether the licensee has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
    - b. Whether the licensee has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
    - c. Whether the licensee has voluntarily surrendered a health care professional license, and if so, an explanation;
    - d. Whether the licensee has had a health professional license suspended or revoked, or whether any other disciplinary action has been taken against a health professional license held by the licensee, and if so, an explanation;
    - e. Whether the licensee has had any action taken against the applicant’s privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
    - f. Whether the licensee has had a federal or state regulatory authority take any action against the licensee’s authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant surrendered the authority in lieu of any of these actions, and if so, an explanation;
    - g. Whether the licensee has been charged with, convicted of, pleaded guilty to, or entered into a plea of no

- contest to a felony or misdemeanor involving moral turpitude or an alcohol- or drug-related offense in any state, or has been pardoned or had a record expunged or vacated, and if so, an explanation;
- h. Whether the licensee has been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
  - i. Whether the licensee has been involuntarily terminated from a health professional position with any city, county, state, or federal government, and if so, an explanation;
  - j. Whether the licensee has been convicted of insurance fraud or a state or the federal government has sanctioned or taken any action against the licensee, such as suspension or removal from practice, and if so, an explanation;
3. Consistent with the Board's statutory authority, other information the Board may deem necessary to evaluate the licensee fully;
  4. A dated and sworn statement by the licensee verifying that during the past biennial license period, the licensee completed at least 40 hours of Category I continuing medical education as required by A.R.S. § 32-2523;
  5. The fee required in R4-17-204;
  6. A confidential questionnaire that includes answers to the following:
    - a. Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
    - b. If the answer to subsection (A)(6)(a) is yes:
      - i. A detailed description of the use, disorder, or condition; and
      - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
    - c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable; and
  7. If the document submitted under R4-17-203(B)(1) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law.
- B.** Under A.R.S. §32-2523(A), the Board shall randomly select at least 10 percent of renewal applications submitted by licensees who are not currently certified by a national certification organization to verify compliance with the continuing medical education requirement specified in R4-17-205(A). If selected, a licensee shall submit to the Board documents that verify compliance with the continuing medical education requirement.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-207. Denial of License or Extension to Complete Continuing Education**

An applicant for a license who is denied the license or a physician assistant who is denied an extension to complete continuing medical education may request a hearing to contest the matter by filing a written notice with the Board within 30 days of receipt of notice of the Board's action. A hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and Article 10.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**ARTICLE 3. DUTIES OF THE EXECUTIVE DIRECTOR**

**R4-17-301. Dismissal of Complaint**

- A.** The executive director, with concurrence of the investigative staff, shall dismiss a complaint if review shows the complaint is without merit and dismissal is appropriate.
- B.** The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of physician assistants about whom complaints were dismissed since the preceding Board meeting.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-301 renumbered to R4-17-302; new Section

R4-17-301 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-302. Referral to Formal Hearing**

- A. The executive director may refer a case directly to a formal hearing if the investigative staff, medical consultant, and lead Board member concur after review of the case that a formal hearing is appropriate.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose cases were referred to formal hearing since the preceding Board meeting and indicate whether each case was referred because it involves revocation, suspension, out-of-state disciplinary action, or complexity.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section renumbered from R4-17-301 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-303. Non-disciplinary Consent Agreement**

The executive director may enter into a consent agreement under A.R.S. § 32-2505(C)(23) with a physician assistant to limit the physician assistant's practice or rehabilitate the physician assistant if there is evidence the physician assistant is mentally or physically unable to engage in the practice of medicine safely and the investigative staff, medical consultant, and lead Board member concur after review of the case that a consent agreement is appropriate.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section renumbered to R4-17-304; new Section R4-17-303 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-304. Request for Inactive Status and License Cancellation**

- A. If a physician assistant requests inactive status or license cancellation, meets the requirements of A.R.S. §§ 32-2525 or 32-2528, and is not participating in the program defined under A.R.S. § 32-2552(E), the executive director shall grant the request.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-304 renumbered to R4-17-305; new Section R4-17-304 renumbered from R4-17-303 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-305. Referral to Formal Interview**

The executive director shall refer a case to a formal interview on a future Board meeting agenda if the investigative staff, lead Board member, and in cases involving quality of care, the medical consultant, concur after review of the case that a formal interview is appropriate.

**Historical Note**

New Section R4-17-305 renumbered from R4-17-304 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-306. Denial of License**

- A. The executive director shall deny a license to an applicant if the executive director, in consultation with the investigative staff and medical consultant concur after review of the application, that the applicant does not meet the statutory requirements for licensure.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose applications were denied since the preceding Board meeting.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

## ARTICLE 4. REGULATION

### R4-17-403. Rehearing or Review

- A. Except as provided in subsection (B), a party who is aggrieved by a decision issued by the Board may file with the Board, no later than 30 days after service of the decision, a written request for rehearing or review of the decision, specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party or the party's attorney.
- B. 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 Board may issue the decision as a final decision without an opportunity for rehearing or review. If the Board issues the decision as a final decision, without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.
- C. A party filing a request for rehearing or review may amend the request at any time before it is ruled upon by the Board. Another party may file a response within 15 days after the date the request or amended request for rehearing is filed. The Board may require a party to file supplemental memoranda explaining the issues raised in the request or response and may permit oral argument.
- D. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the requesting party's rights:
  - 1. Irregularity in the Board's or administrative law judge's administrative proceedings or any order or abuse of discretion that deprived the party of a fair hearing;
  - 2. Misconduct of the Board, administrative law judge, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing;
  - 7. The decision is the result of passion or prejudice; or
  - 8. The decision or findings of fact are not justified by the evidence or are contrary to law.
- E. The Board may affirm or modify a decision or grant rehearing or review on all or part of the issues for any of the reasons set forth in subsection (D). An order granting a rehearing or review shall specify each ground for the rehearing or review.
- F. No later than 30 days after a decision is issued by the Board, the Board on its own initiative may order a rehearing or review for any reason in subsection (D).
- G. When a request for rehearing or review is based on affidavits, a party shall serve the affidavits with the request. The opposing party may, within 10 days after service, serve opposing affidavits. The Board may extend the time for serving opposing affidavits for no more than 20 days for good cause shown or by written stipulation by the parties. The Board may permit reply affidavits.

#### Historical Note

New Section R4-17-403 renumbered from R4-17-402 and amended effective April 22, 1998 (Supp. 98-2).  
Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

## TITLE 4. PROFESSIONS AND OCCUPATIONS

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### Title 4

#### CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

##### Supp. 19-1

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2019 through

**16-4, 1-7 pages**

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September 14, 2018

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.
2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:
  - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
  - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
  - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.
5. "Board" means the Arizona regulatory board of physician assistants.
6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.
8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.
10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.
11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.
12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.
13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.
14. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.
15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.
16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.
17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.
18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:
- (a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.
  - (b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.
  - (c) Performing health care tasks that have not been delegated by the supervising

physician.

- (d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.
- (e) Signing a blank, undated or predated prescription form.
- (f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.
- (j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (k) Violating a formal order, probation or stipulation issued by the board.
- (l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.
- (m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.
- (n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.
- (o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.
- (p) Failing or refusing to maintain adequate records on a patient.
- (q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.
- (r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.
- (s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

- (t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.
- (u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.
- (v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.
- (x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.
- (y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.
- (z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.
- (aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.
- (bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.
- (cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.
- (dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.
- (ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.
- (ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.
- (gg) Allowing the use of the licensee's name in any way to enhance or permit the

continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this

subdivision, "sexual conduct" includes:

- (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
- (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.
- (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
- (nn) Performing health care tasks under a false or assumed name in this state.

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity

A. The Arizona regulatory board of physician assistants is established consisting of the following members:

1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.
2. Two public members who are appointed by the governor.
3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.
4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The term of office of members of the board is four years to begin and end on July 1.

D. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's

successor. However, the governor may remove a member after notice and a hearing, on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.

E. A board member's term automatically ends:

1. On written resignation submitted to the board chairperson or to the governor.
2. If the member is absent from this state for more than six months during a one-year period.
3. If the member fails to attend three consecutive regular board meetings.
4. Five years after retirement from active practice.

F. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

**32-2503. Organization; meetings; compensation**

A. The board shall annually elect a chairperson and vice-chairperson from among its members.

B. The board shall hold a regular meeting at least quarterly on a date and at a time and place it designates. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other as the chairperson determines are necessary to carry out the functions of the board. The board shall hold a special meeting on any day that the chairperson determines is necessary to carry out the functions of the board. The vice-chairperson may call regular meetings and special meetings if the chairperson is not available.

C. Members of the board are eligible to receive compensation in the amount of two hundred dollars for each day of actual service in the business of the board and for all expenses necessarily and properly incurred in attending board meetings.

**32-2504. Powers and duties; delegation of authority; rules; subcommittees; immunity**

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.
2. License and regulate physician assistants pursuant to this chapter.
3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.
4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.

5. Initiate investigations and determine on its own motion whether a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.

6. Establish fees and penalties pursuant to section 32-2526.

7. Develop and recommend standards governing the profession.

8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.

9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.

10. Discipline and rehabilitate physician assistants pursuant to this chapter.

11. Beginning October 1, 2018, certify physician assistants for ninety-day prescription privileges for schedule II or schedule III controlled substances that are not opioids or benzodiazepine if the physician assistant either:

(a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.

(b) Met any other requirement established by board rule.

B. The board may delegate to the executive director the board's authority pursuant to this section or section 32-2551. The board shall adopt a substantive policy statement pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

C. The board may make and adopt rules necessary or proper for the administration of this chapter.

D. The chairperson may establish subcommittees consisting of board members and define their duties as the chairperson deems necessary to carry out the functions of the board.

E. Board employees, including the executive director, temporary personnel and professional medical investigators, are immune from civil liability for good faith actions they take to enforce this chapter.

F. In performing its duties pursuant to subsection A of this section, the board may receive and review staff reports on complaints, malpractice cases and all investigations.

G. The chairperson and vice chairperson of the Arizona regulatory board of physician assistants are members of the committee on executive director selection and retention

established by section 32-1403, subsection G, which is responsible for the appointment of the executive director pursuant to section 32-1405.

32-2505. Personnel; consultants; compensation

A. The executive director employed by the Arizona medical board is the executive director of the Arizona regulatory board of physician assistants. The staff of the Arizona medical board shall carry out the administrative responsibilities of the Arizona regulatory board of physician assistants.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

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

1. Employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the physician assistant practice act for consideration by the legislature.

4. Appoint and employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.

10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician assistant may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice as a physician assistant.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts to procure goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Represent the board in matters with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

18. Enter into stipulated agreements on behalf of the board with persons under the jurisdiction of the board for the treatment, rehabilitation or monitoring of chemical substance abuse or misuse.

19. Review all complaints filed pursuant to section 32-2551. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit.

20. If delegated by the board, directly refer cases to a formal hearing.

21. If delegated by the board, close cases resolved through mediation.

22. If delegated by the board, issue advisory letters.

23. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

24. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to this chapter.

25. If delegated by the board, refer cases to the board for a formal interview.

26. Perform all other administrative, licensing or regulatory duties required by the board.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery, or if mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or

reject the executive director's action.

32-2506. Arizona medical board fund

A. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund pursuant to this section are subject to section 35-143.01.

32-2507. Licensee profiles; civil penalty

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile shall contain the following information:

1. A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years. For the purposes of this paragraph, a licensee is deemed to be convicted of a crime if the licensee pled guilty or was found guilty by a court of competent jurisdiction.
2. A description of any felony charges or misdemeanor charges involving moral turpitude within the last five years to which the licensee pled no contest.
3. The number of pending complaints and final board disciplinary and nondisciplinary actions within the last five years. Information concerning pending complaints shall contain the following statement:

Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit and are dismissed.

4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall contain the following statement:

The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician assistant. A payment in settlement of a medical malpractice action does not create a presumption that medical malpractice occurred.

5. The name and location of the licensee's training and the date of graduation.
6. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A of this section as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in

information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1, 2, 3 and 4 of this section. The board shall update the internet website information after receipt of the renewal application pursuant to section 32-2523.

C. The board shall provide each licensee with a copy of the licensee's profile and give the licensee reasonable time to correct the profile before it is available to the public.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

### 32-2521. Qualifications

A. An applicant for licensure shall:

1. Have graduated from a physician assistants educational program approved by the board.
2. Pass a certifying examination approved by the board.
3. Be physically and mentally able to safely perform health care tasks as a physician assistant.
4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter. This paragraph does not prevent the board from considering the application of an applicant who was the subject of disciplinary action in another jurisdiction if the applicant's act or conduct was subsequently corrected, monitored and resolved to the satisfaction of that jurisdiction's regulatory board.
5. Not have had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Not be currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.
7. Not have surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the application of an applicant who surrendered, relinquished or gave up a license in lieu of disciplinary action by a

regulatory board in another jurisdiction if that regulatory board subsequently reinstated the applicant's license.

8. Have submitted verification of all hospital affiliations and employment for the five years preceding application. Each hospital must verify the applicant's affiliation or employment on the hospital's official letterhead or the electronic equivalent.

B. The board shall require an applicant to have all credentials submitted from the primary source where the document originated, either electronically or by hard copy, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board.

C. The board may make investigations it deems necessary to advise itself with respect to the qualifications of the applicant, including physical examinations, mental evaluations, written competency examinations or any combination of these examinations and evaluations.

D. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, before issuing a license the board must determine to its satisfaction that the act or conduct has been corrected, monitored and resolved. If the act or conduct has not been resolved, before issuing a license the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

E. If another jurisdiction has taken disciplinary action against an applicant, before issuing a license the board must determine to its satisfaction that the cause for the action was corrected and the matter was resolved. If the other jurisdiction has not resolved the matter, before issuing a license the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

F. The board may delegate to the executive director the authority to deny licenses to applicants who do not meet the requirements of this section.

### 32-2522. Applications; interview; withdrawal

A. Each applicant shall file a verified completed application in the form required and supplied by the board that is accompanied by the prescribed application fee.

B. The application shall be designed to require the submission of evidence, credentials and other proof necessary to satisfy the board that the applicant qualifies for licensure.

C. The application shall contain the oath of the applicant that:

1. All information contained in the application and evidence submitted with it are true and correct.

2. The credentials submitted were not procured by fraud or misrepresentation or any mistake of which the applicant is aware.

3. The applicant is the lawful holder of the credentials.

D. All applications submitted to the board and any attendant evidence, credentials or other proof submitted with an application are the property of the board and part of the permanent record of the board and shall not be returned to an applicant.

E. After the board has received a completed application the board either shall grant or deny a license to the applicant. If an applicant has submitted an incomplete application, the board shall promptly notify an applicant, in writing, of the deficiencies, if any, in the application that prevent it from being a completed application.

F. The board or its representatives may interview an applicant to determine whether the application is sufficient.

G. Applications are considered withdrawn on any of the following conditions:

1. Written request of the applicant.

2. Failure of the applicant to appear for an interview with the board unless good cause is shown.

3. Failure to submit a completed application within one year from the date of the mailing by the board of a statement to the applicant of the deficiencies in the application pursuant to subsection E of this section.

H. On request of an applicant who disagrees with the statement of deficiency, the board shall grant a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

I. The board may deny a license to an applicant who does not meet the requirements of this article.

J. If an applicant does not meet the requirements of section 32-2521, subsection A, paragraph 3, the board may issue a license subject to any of the following probationary conditions:

1. Restrict the licensee's practice.

2. Require the licensee to continue medical or psychiatric treatment.

3. Require the licensee to participate in a specified rehabilitation program.

4. Require the licensee to abstain from alcohol and other drugs.

K. If the board offers a probationary license to an applicant pursuant to subsection J of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

**32-2523. Licensure; renewal; continuing education; audit; penalty fee; expiration**

A. Except as provided in section 32-4301, each holder of a regular license shall renew the license every other year on or before the licensee's birthday by paying the prescribed renewal fee and supplying the board with information it deems necessary, including proof of having completed, before the renewal date, forty hours of category I continuing medical education approved by the American academy of physician assistants, the American medical association, the American osteopathic association or any other accrediting organization acceptable to the board. The board shall verify continuing medical education compliance and shall randomly audit at least ten percent of physician assistants who are renewing their license within the calendar year and who do not hold a current national certification from a national certification organization for physician assistants that is approved by the board.

B. Except as provided in section 32-4301, a holder of a regular license who fails to renew the license within thirty days after the licensee's birthday shall pay a penalty fee as set forth in rule for late renewal.

C. Except as provided in section 32-4301, if a holder of a regular license fails to renew the license within ninety days after the licensee's birthday, the license automatically expires. It is unlawful for a person to perform health care tasks of a physician assistant after the license expires.

D. A person whose license expires may reapply for licensure pursuant to this chapter.

E. If a licensee does not meet the requirements of subsection A of this section because of that person's illness, religious missionary activity or residence in a foreign country or any other extenuating circumstance, the board may grant an extension of the deadline if it receives a written request to do so from the licensee that details the reasons for this request.

F. The continuing medical education requirement in subsection A of this section is deemed satisfied if, at the time of renewal, the licensee holds a certification in good standing from a certifying body approved by the board.

**32-2524. Exemption from licensure**

This chapter does not require licensure of:

1. A student who is enrolled in a physician assistant education program approved by the board.
2. A physician assistant who is an employee of the United States government and who works on land or in facilities owned or operated by the United States government.
3. A physician assistant who is a member of the armed forces of the United States and who is on official orders or performing official duties as outlined in the appropriate regulation of that branch of military service.

32-2525. Cancellation of license

- A. A person who holds an active regular license as a physician assistant, who is not presently under investigation by the board as the result of a complaint or information received by it, and against whom the board has not commenced any disciplinary proceedings may request and the board shall grant cancellation of the license.
- B. The board may accept the request to cancel the active regular license of a physician assistant who has been charged with a violation of this chapter or rules adopted pursuant to this chapter if the physician assistant admits the charges and stipulates this admission for the record.

32-2526. Fees

- A. By a vote at its annual fall meeting, the board shall establish nonrefundable fees and penalties that do not exceed the following:
  1. Processing an application for an active license, four hundred dollars.
  2. Issuing an active license, four hundred dollars.
  3. Annual renewal of a regular license, four hundred dollars.
  4. Penalty fee for late renewal of a regular license, three hundred fifty dollars.
  5. Issuance of a duplicate license, twenty-five dollars.
  6. Verification of a license, ten dollars.
  7. Copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.
  8. The sale of computerized tapes or diskettes that do not require programming, one hundred dollars.
  9. Services not required to be provided by this chapter, but that the board deems appropriate to carry out the intent and purpose of this chapter, a fee of not to exceed the actual cost of providing the services. Notwithstanding section 32-2506, the board shall deposit, pursuant to sections 35-146 and 35-147, all of the monies collected under this

paragraph in the Arizona medical board fund established by section 32-1406.

B. Notwithstanding subsection A of this section, on written request the board may return the license renewal fee for good cause shown.

C. The board may collect from a drawer of a dishonored check, draft, order or note an amount allowed pursuant to section 44-6852.

#### 32-2527. Change of address; penalty

A. A person holding an active license as a physician assistant in this state shall inform the board in writing within thirty days of that person's current residence address, office address and telephone number and of each change in residence and office address or telephone number that occurs. A residential address is not available to the public unless it is the only address of record.

B. The board may assess its costs incurred in locating a physician assistant who fails to comply with subsection A of this section within thirty days after the date of change. The board may also assess a penalty of not to exceed one hundred dollars against the physician assistant. Notwithstanding section 32-2506, monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona medical board fund established by section 32-1406.

#### 32-2528. Inactive license; application; prohibited activities

A. A person who holds a regular license pursuant to this chapter may request an inactive license from the board if both of the following are true:

1. The licensee is not under investigation by the board.
2. The board has not begun disciplinary proceedings against the licensee.

B. The board may grant an inactive license and shall waive the annual renewal fee and requirements for continuing medical education if the person certifies total retirement from the performance of health care tasks in this state, any jurisdiction of the United States and any foreign country and is current on all fees required by this chapter.

C. An inactive licensee shall not perform health care tasks.

D. The board may convert an inactive license to a regular license on payment of the annual renewal fee and presentation of evidence to the board that the holder possesses the medical knowledge and the physical and mental ability to safely engage in the performance of health care tasks. The board may require any combination of physical examination, psychiatric or psychological evaluation, oral competency examination or a board qualified written examination or interview it believes necessary to assist it in determining the ability of a physician assistant who holds an inactive license to return to regular licensure.

32-2531. Physician assistant scope of practice; health care tasks; supervising physician duties; civil penalty

- A. A supervising physician may delegate health care tasks to a physician assistant.
- B. A physician assistant shall not perform surgical abortions as defined in section 36-2151.
- C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.
- D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.
- E. The physician assistant may pronounce death and, if delegated, may authenticate by the physician assistant's signature any form that may be authenticated by a physician's signature.
- F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.
- G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions. These tasks may include:
  - 1. Obtaining patient histories.
  - 2. Performing physical examinations.
  - 3. Ordering and performing diagnostic and therapeutic procedures.
  - 4. Formulating a diagnostic impression.
  - 5. Developing and implementing a treatment plan.
  - 6. Monitoring the effectiveness of therapeutic interventions.
  - 7. Assisting in surgery.
  - 8. Offering counseling and education to meet patient needs.
  - 9. Making appropriate referrals.
  - 10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code

section 802) and prescription-only medications.

11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.

12. Performing minor surgery as defined in section 32-2501.

13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.

H. The supervising physician shall:

1. Meet the requirements established by the board for supervising a physician assistant.

2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.

3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.

4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.

I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.

J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.

K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.

L. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed fifty dollars for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general

fund. A physician assistant and the supervising physician may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection F of this section, a physician assistant shall not prescribe, dispense or administer:

1. A schedule II or schedule III controlled substance as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without delegation by the supervising physician, board approval and United States drug enforcement administration registration.

2. A schedule IV or schedule V controlled substance as defined in the federal controlled substances act of 1970 without United States drug enforcement administration registration and delegation by the supervising physician.

3. Prescription-only medication without delegation by the supervising physician.

4. Prescription medication intended to perform or induce an abortion.

B. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

C. Unless certified for ninety-day prescription privileges pursuant to section 32-2504, subsection A, a physician assistant shall not prescribe a schedule II or schedule III controlled substance for a period exceeding seventy-two hours. For each schedule IV or schedule V controlled substance, a physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

D. A prescription for a schedule II or III controlled substance that is an opioid or benzodiazepine is not refillable without the written consent of the supervising physician.

E. Prescription-only drugs shall not be dispensed, prescribed or refillable for a period exceeding one year.

F. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance

use disorders.

G. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be:

1. Prepackaged in a unit-of-use package by a pharmacist.
2. Labeled to show the name of the physician assistant.

H. A physician assistant shall not obtain a drug from any source other than the supervising physician or a pharmacist. A physician assistant may receive manufacturers' samples if delegated to do so by the supervising physician.

I. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.

J. The board shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

K. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

### 32-2533. Supervising physician; responsibilities

A. A supervising physician is responsible for all aspects of the performance of a physician assistant, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.

B. Each physician-physician assistant team must ensure that:

1. The physician assistant's scope of practice is identified.
2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.
3. The relationship of, and access to, the supervising physician is defined.
4. A process for evaluation of the physician assistant's performance is established.

C. A supervising physician shall not supervise more than four physician assistants who

work at the same time.

D. A supervising physician shall develop a system for recordation and review of all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

32-2534. Initiation of practice

A physician assistant may not perform health care tasks until the physician assistant has completed and signed a written agreement with a supervising physician pursuant to section 32-2531, subsection H, paragraph 4.

32-2535. Emergency medical care; supervision

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location and with or without supervision.

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the physician assistant's supervising physician or physicians. The board or the executive director shall notify the physician assistant and the supervising physician of the content of the reported information in writing within one hundred twenty days of its receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental,

physical or medical competency examination or any combination of those examinations or may make investigations including investigational interviews between representatives of the board and the physician assistant and the supervising physician as it deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete designated continuing medical education courses.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense.

F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician. If the physician assistant refuses the

invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.

H. After the formal interview, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.
4. File a letter of reprimand.
5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:
  - (a) Restrictions on the health care tasks the physician assistant may perform.
  - (b) Temporary suspension for not to exceed twelve months.
  - (c) Restitution of patient fees.
  - (d) Education or rehabilitation at the licensee's own expense.
7. Require the licensee to complete designated continuing medical education courses.

I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, it shall immediately initiate formal proceedings for the suspension or revocation of the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate for the protection of the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than three hundred dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the Arizona regulatory board of physician assistants determines that a criminal violation may have occurred involving the performance of health care tasks, it shall provide evidence of the violation to the appropriate criminal justice agency.

P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

[32-2552. Right to examine and copy evidence; subpoena authority; right to counsel; confidentiality of records](#)

A. In connection with an investigation conducted by the board on its own motion or as the result of information received pursuant to section 32-2551, subsection A, the board or its duly authorized agent or employee at all reasonable times shall have access to, for the purpose of examination, and the right to copy any documents, reports, records or other physical evidence of any person being investigated or the reports, the records and any

other documents maintained by and in the possession of any hospital, clinic, physician's office, physician assistant's office, laboratory, pharmacy, health care institution as defined in section 36-401 or other public or private agency if the documents, reports, records or evidence relate to a physician assistant's medical competence, unprofessional conduct or mental or physical ability to safely engage in the physician assistant's approved health care tasks.

B. For the purpose of all investigations and proceedings conducted by the board:

1. On its own motion or on application of a person involved in an investigation, the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production of documents or any other physical evidence for examination or copying if the evidence relates to the medical incompetence, unprofessional conduct or mental or physical ability of a physician assistant to safely perform health care tasks. Within five days after service of a subpoena requiring the production of evidence in the person's possession or under the person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall do so if it believes that the evidence required does not relate to violations of this chapter, is not relevant to the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.

2. A person appearing before the board may be represented by counsel.

3. A board member or agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

4. On application by the board or by the person subpoenaed, the superior court has jurisdiction to issue an order to do either of the following:

(a) Require a person to appear before the board or its authorized agent to produce evidence relating to the investigation.

(b) Revoke, limit or modify a subpoena if the court determines that the evidence does not relate to a violation of this chapter, is not relevant to the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.

C. The following items are not available to the public:

1. Patient records, including clinical records, medical reports and laboratory statements and reports.

2. Files, films, reports or oral statements relating to diagnostic findings or treatment of patients.

3. Any information from which a patient or the patient's family might be identified.

4. Information received and records kept by the board in its investigations.

D. This section and any other provision of law that makes communications between a physician or a physician assistant and the physician assistant's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

E. Hospital records, medical staff records, medical staff review committee records, testimony concerning those records and proceedings related to the creation of those records are not available to the public, shall be kept confidential by the board and are subject to the same provisions of law concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, medical staffs and medical staff review committees.

### 32-2553. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

### 32-2554. Violation; classification

A. A person who does any of the following is guilty of a class 6 felony:

1. Performs a health care task if that person is not licensed pursuant to this chapter or is not exempt from licensure pursuant to this chapter.
2. Secures a license to perform health care tasks by fraud or deceit.
3. Impersonates a member of the board.

B. A person who is not licensed pursuant to this chapter shall not use the designation "P.A.", "P.A.-C." or "Physician assistant" or use any other words, initials or symbols in a way that leads the public to believe that the person is licensed pursuant to this chapter. A person who violates this subsection is guilty of a class 2 misdemeanor.

### 32-2555. Injunctions

A. The superior court may issue an injunction to enjoin:

1. A person who is not licensed pursuant to this chapter or who is not exempt from licensure pursuant to this chapter from performing health care tasks.
2. A physician assistant from performing health care tasks if the court determines that the licensee will or may cause irreparable damage to the public health and safety before the board has an opportunity to act pursuant to section 32-2551.
3. An act proscribed in section 32-2554, subsection B.

B. In a petition for an injunction pursuant to subsection A, paragraph 1 of this section, it is sufficient for the petitioner to charge that the respondent on a day certain in a named county engaged in the performance of health care tasks without being licensed or exempt from licensure pursuant to this chapter. It is not necessary for the petitioner to show damage or injury.

C. In a petition for an injunction pursuant to subsection A, paragraph 2 of this section, the petitioner shall specify the facts regarding the licensee's threat to the public health and safety.

D. The board shall file the petition in the superior court in Maricopa county or in the county where the respondent resides or is found.

**32-2556. Human immunodeficiency virus; disclosure; immunity; definition**

A. It is not an act of unprofessional conduct for a licensee to report to the department of health services the name of a patient's spouse, sex partner or person with whom the patient has shared hypodermic needles or syringes if the licensee knows that the patient tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before reporting this information to the department of health services the licensee shall ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a licensee who knows or who has reason to believe that a significant exposure has occurred between a patient who tests positive for the human immunodeficiency virus and a health care worker or a public safety employee to inform the worker or employee of the exposure. Before disclosing this information the licensee shall ask the patient to disclose this information voluntarily. If the patient does not agree to do this the licensee may disclose the information in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A licensee is not subject to civil or criminal liability for either disclosing or not disclosing information.

D. If a licensee decides to make a disclosure pursuant to this section the licensee may request the department of health services to make the disclosure on the licensee's behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of the human immunodeficiency virus.

**32-2557. Disciplinary action; reciprocity**

A. The board shall initiate an investigation pursuant to section 32-2551 if a professional regulatory board in another jurisdiction in the United States has taken disciplinary action

against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a professional regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

**32-2558. Reinstatement of revoked license**

A. On written application the board may issue a new license to a physician assistant whose license was previously revoked by the board if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation. In making its decision the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation period that would have constituted a basis for revocation pursuant to section 32-2551.
2. If a criminal conviction was a basis of the revocation, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than two years after the date of revocation.

C. The board shall vacate its previous order to revoke a license if that revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician assistant may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all initial licensing requirements prescribed by this chapter.

**LEAFY GREENS FOOD SAFETY COMMITTEE (F20-0506)**

Title 3, Chapter 9, Article 6, Leafy Greens Food Safety Committee



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT:** Arizona Leafy Greens Food Safety Committee  
Title 3, Chapter 9, Article 6

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This Five-Year-Review Report from the Arizona Leafy Greens Food Safety Committee relates to rules in Title 3, Chapter 9, Article 6. The Committee administers and enforces the Arizona Leafy Green Products Shipper Marketing Agreement. The agreement requires all shippers of leafy green vegetables who are signatories to the agreement to follow best practices with handling the products. The rules incorporate by reference the best practice guidelines, provide requirements for proper usage of the service mark, and outline ramifications for violations of the rules.

The Committee did not propose any changes in the last 5YRR of these rules.

### **Proposed Action**

The Department is not proposing any changes to the rules.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Committee cites to both general and specific statutory authority.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The Leafy Greens Food Safety Committee administers and enforces the Arizona Leafy Green Products Shipper Marketing Agreement. This marketing agreement requires shippers of leafy green vegetables who are signatories to the agreement to follow best practices with respect to the handling of those products in order to enhance food safety and prevent the outbreak of illnesses stemming from the consumption of leafy green vegetables.

The stakeholders include: The Arizona Department of Agriculture, The Leafy Greens Food Safety Committee, shippers of Leafy Green Vegetables, the agricultural community, and the general public.

The economic, small business, and consumer impact of the rules is positive. The Arizona lettuce industry is one of Arizona’s most economically significant agricultural sectors, bringing an estimated \$2 billion to the state in the way of jobs and revenues. The assessment signatories are charged is calculated on a per unit basis so that smaller businesses pay less. These rules increase the economic welfare of the state by creating commodity specific food safety guidelines, which both increases the quality of products and adds value to them in the marketplace.

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 rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. Industry requested the marketing agreement and rules be created and has been extensively involved in the development and implementation process. The Leafy Green Food Safety Committee members directly represent signatories to the agreement. The Committee ensures the rules and guidance appropriately reflect common business practices and do not include unnecessary burdens.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Committee indicates they did not receive any written criticisms on the rules.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Committee indicates the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Committee indicates the rules are enforced as written.

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

Not applicable, there is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require a permit of license.

9. **Conclusion**

The Committee is not proposing to make any changes to the rules. The rules are overall clear, concise, understandable, and effective. Council staff recommends approval of this report.

DOUGLAS A. DUCEY  
Governor



C.R. WATERS  
Chairman

**ARIZONA LEAFY GREENS FOOD SAFETY COMMITTEE**

1688 W. Adams Street, Phoenix, Arizona 85007  
(602) 542-0945 | FAX (602) 542-0898

March 12, 2020

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

RE: Five-Year Review Report for A.A.C. Title 3, Chapter 9, Article 6

Dear Ms. Sornsins:

Enclosed please find the Arizona Leafy Greens Food Safety Committee's five-year review report for A.A.C. Title 3, Chapter 9, Article 6 which is due on March 31, 2020. All of the rules in this Article have been reviewed, there is no intention to modify them, and none of them are due to expire.

The Arizona Leafy Greens Food Safety Committee hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-0945 or [tlopez@azda.gov](mailto:tlopez@azda.gov) with any questions about this report.

A handwritten signature in blue ink, appearing to read "Teresa Lopez". The signature is fluid and cursive.

Teresa Lopez  
Arizona Leafy Greens Food Safety Committee Administrator

**ARIZONA DEPARTMENT OF AGRICULTURE**

**2020 FIVE-YEAR REVIEW REPORT**



**TITLE 3. AGRICULTURE  
CHAPTER 9. DEPARTMENT OF AGRICULTURE –  
AGRICULTURAL COUNCILS AND COMMISSIONS  
ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE**

**Arizona Department of Agriculture  
2020 Five-Year Review Report  
Chapter 9. Department of Agriculture –  
Agricultural Councils and Commissions  
Article 6. Leafy Greens Food Safety Committee**

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**Arizona Department of Agriculture  
2020 Five-Year Review Report  
Chapter 9. Department of Agriculture –  
Agricultural Councils and Commissions  
Article 6. Leafy Greens Food Safety Committee**

**I. Introduction**

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action, and obtain approval of the report from the Governor’s Regulatory Review Council (GRRC). The Arizona Department of Agriculture’s report for rules listed under A.A.C. Title 3, Chapter 9, Agricultural Councils and Commissions, Article 6. Leafy Greens Food Safety Committee are scheduled to be submitted to GRRC by March 31, 2020. Section II of this document contains the Department's report on these rules.

**Arizona Department of Agriculture  
2020 Five-Year Review Report  
Chapter 9. Department of Agriculture –  
Agricultural Councils and Commissions  
Article 6. Leafy Greens Food Safety Committee**

**II. Five-Year Review Report**

**1. Statutory authority**

Authorizing statute: A.R.S. § 3-414(C)(11)

Implementing statute: A.R.S. § 3-404(B)

**2. Objective**

**General Objective of the Rules:**

The Leafy Greens Food Safety Committee administers and enforces the Arizona Leafy Green Products Shipper Marketing Agreement. This marketing agreement requires shippers of leafy green vegetables who are signatories to the agreement to follow best practices with respect to the handling of those products in order to enhance food safety and prevent the outbreak of illnesses stemming from the consumption of leafy green vegetables. Signatories may use the Leafy Green Food Safety Committee's collective service mark on their product as long as they are in compliance with the best practices incorporated by reference into these rules. The rules in this article incorporate by reference the best practice guidelines, provide the requirements for proper usage of the service mark, and outline the ramifications for violations of the rules.

**Specific Objectives:**

R3-9-601: The objective is to establish definitions of terms for the Article.

R3-9-602: Requires signatories of the marketing agreement to comply with the best practices guidelines, maintain a trace-back system, and be subject to periodic audits. It also requires signatories to only buy or handle leafy green product grown in Arizona from a shipper or producer that meets these same requirements. Finally, it clarifies that if the best practices require a Standard Operating Procedure (SOP) the signatory must have and must follow the SOP.

R3-9-603: Sets the requirements for usage of the service mark.

R3-9-604: Describes the conduct that may result in loss or suspension of a signatory's privilege to use the service mark, and establishes an enforcement system used to determine length of suspension and requirements for reinstatement in relation to seriousness and type of

violation. It also provides signatories with an opportunity for hearing prior to loss of the privilege unless the Committee determines public health, safety, or welfare requires summary suspension.

R3-9-605: Establishes and defines four levels of violations: flagrant violations, major deviations, minor deviations, and minor infractions.

R3-9-606: Requires signatories who commit a flagrant violation, major deviation, or minor deviation to complete a corrective action plan process, as set forth in the rule.

**3. Analysis of effectiveness in achieving the objective**

The rules are effective in achieving their objectives.

**4. Consistency**

The rules in this article are consistent with all state and federal statutes and rules, including Ariz. Rev. Stats. Title 3, Chapter 3, Article 1, which sets for the requirements for establishing and governing marketing orders of this nature.

**5. Agency enforcement policy**

All the rules in this Article are enforced as written.

**6. Clarity, conciseness, and understandability**

The rules in this Article are clear, concise and understandable.

**7. Written criticisms**

The Department has not received any written criticisms of the rules within the last 5 years.

**8. Economic, small business, and consumer impact comparison**

The economic, small business, and consumer impact of the rules is positive. The Arizona lettuce industry is one of Arizona's most economically significant agricultural sectors, bringing an estimated \$2 billion to the state in the way of jobs and revenues. The marketing agreement and these rules were put in place at the request of Arizona lettuce industry. Industry members voluntarily sign on and agree to follow the rules. The assessment signatories are charged is calculated on a per unit basis so that smaller businesses pay less. Safe production and handling practices are key to the success of the lettuce industry. These rules increase the economic welfare of the state by creating commodity specific food safety guidelines, which both increases the quality of products and adds value to them in the marketplace.

9. **Analysis submitted by another person**

None.

10. **Completion of course of action from prior review**

There was no proposed course of action in the prior review.

11. **Determination that rule imposes least burden and costs**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. Industry requested the marketing agreement and rules be created and has been extensively involved in the development and implementation process. The Leafy Green Food Safety Committee members directly represent signatories to the agreement. The Committee ensures the rules and guidance appropriately reflect common business practices and do not include unnecessary burdens.

12. **Determination that rules are not more stringent than corresponding federal law**

There is no specific federal law that corresponds with these rules. These rules are not more stringent than other similar federal laws related to marketing orders and agreements. See Marketing Agreements and Orders: Fruits, Vegetables, Nuts, 7 C.F.R. Parts 900-999.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules in this Article do not require a permit.

14. **Proposed course of action**

The Department intends to maintain the rules as currently written.

4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
  5. The appropriateness of the budget request in achieving the project objectives,
  6. The appropriateness of the proposal time-frame to the stated project objectives, and
  7. Relevant experience and qualifications of the applicant.
- D. Public participation.**
1. The ACRC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the ACRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.**
1. The ACRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The ACRC may modify an applicant's proposed project in awarding funding.
  3. The ACRC shall notify an applicant in writing of the ACRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the ACRC decision. The ACRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- F. Awards and project monitoring.**
1. Before releasing grant funds, the ACRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the ACRC to monitor the progress of the project by signing a grant award agreement.
  2. The ACRC shall pay no more than 50% of the grant in the initial payment to the awardee.
  3. During the term of the project, the awardee shall inform the ACRC of changes to the awardee's address, telephone number, or other contact information.
  4. The ACRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
  5. The ACRC shall not award the grant funds remaining after the initial payment until the awardee submits to the ACRC:
    - a. A final research report, and
    - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
  6. The ACRC shall make research findings and reports resulting from any grant awarded by the ACRC available to Arizona citrus producers.
- G. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of written request by the ACRC.
- H. Governmental units.**
1. The ACRC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
  2. The ACRC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
  3. A governmental unit may apply to the ACRC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
    - a. The application shall include a description of the project, the scope of work to be performed, a budget

that does not include overhead expenses, and an authorized signature.

- b. The application shall be available for public inspection upon receipt by the ACRC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 176, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3665, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE**

**R3-9-601. Definitions**

"Act" means A.R.S. Title 3, Chapter 3, Article 1.

"Auditor" or "Inspector" means a state or federal agricultural regulatory agency or their designee(s), or a private entity contracted by the Committee to perform inspections authorized by the Act.

"Best practices" means the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 9 - Arizona" dated August 25, 2015. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at <http://www.arizonaleafygreens.org/#!/guidelines/c221s> and at the Arizona Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007.

"Committee" means the Leafy Greens Food Safety Committee established pursuant to the Marketing Agreement.

"LGMA" or "Marketing Agreement" means the Arizona Leafy Green Products Shipper Marketing Agreement, as amended effective October 1, 2015, that was approved pursuant to the Act. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at <http://www.azlgma.gov/members/resources.asp> and at the Arizona Department of Agriculture, 1688 W. Adams, Phoenix, Arizona 85007.

"SOP" means standard operating procedure.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 1767, effective August 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt rulemaking at 18 A.A.R. 2928, effective August 1, 2012 (Supp. 12-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4). Amended by final exempt rulemaking pursuant to A.R.S. § 3-414(C)(11) at 21 A.A.R. 3082, effective August 25, 2015 (Supp. 15-4).

**R3-9-602. Best Practices; LGMA Compliance**

- A.** Signatories shall comply with the best practices, maintain a trace-back system, and be subject to periodic audit by an auditor.
- B.** Signatories shall only buy, consign, or otherwise accept or handle leafy green products (grown in Arizona) from a shipper or producer who is in compliance with the best practices (including recordkeeping requirements), maintains a trace-back system, and is subject to periodic audit by an auditor.
- C.** When the best practices require a SOP, there shall be an appropriate SOP and that SOP shall be followed.

**Historical Note**

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

2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

### R3-9-603. Service Mark Usage

- A. A signatory's compliance with the LGMA and R3-9-602 is a condition precedent and subsequent to the signatory's privilege to use the service mark.
- B. An authorized signatory may use the service mark on all bills of lading and on other documents.
- C. A signatory shall:
  1. Use the service mark without reference to a private brand or label.
  2. Provide reasonable assurances that the signatory has a system in place to comply with this Section, maintain records sufficient to audit the system for the duration of the LGMA, and make those records available to the Committee upon request.
- D. A signatory shall not:
  1. Use the service mark on packaging or product or as a certification mark to certify product.
  2. Use the service mark as the signatory's own mark or as the exclusive representation of its business entity.
  3. Insert within or overlap the boundaries of the service mark with the signatory's name or trademark.
  4. Alter the service mark in any way other than proportionately adjusting the size of the service mark.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4).

### R3-9-604. Loss of Use of Service Mark

- A. A signatory shall lose the privilege to use the service mark if the signatory:
  1. Commits a flagrant violation or repeated major deviation;
  2. Fails to comply with R3-9-603;
  3. Has not paid assessments due for the prior fiscal year; or
  4. Withdraws from participation in the LGMA pursuant to Article XVI, section C of the LGMA.
- B. The first flagrant violation or repeated major deviation shall result in a suspension of the privilege to use the service mark for a minimum two-week period.
- C. A flagrant violation or repeated major deviation following the first flagrant violation or repeated major deviation shall result in an indefinite suspension of the privilege to use the service mark.
- D. A flagrant violation or repeated major deviation following a suspension pursuant to subsection (C) shall result in an indefinite revocation of the privilege to use the service mark. The privilege to use the service mark shall not be restored to the signatory for a minimum of two years unless the signatory demonstrates to the satisfaction of the auditor and the Committee a significant change in management and brand.
- E. A signatory whose privilege to use the service mark is suspended or revoked pursuant to subsections (B) through (D) shall not use the service mark until the signatory has undergone at least one new audit without the finding of any major deviations or flagrant violations and has evidenced that the signatory has corrected any minor deviations found.
- F. At least two weeks of any suspension of the privilege to use the service mark under subsections (B) through (D) shall occur between December 1 and March 31.

- G. The Committee may accelerate the progression of penalties under this Section if the signatory's product seriously affects a person's health and the signatory handled the product with intentional, knowing or reckless disregard for the signatory's obligations under the LGMA and best practices.
- H. A signatory shall not lose the privilege to use the service mark under subsections (A)(1) and (2) without an opportunity for a hearing under A.R.S. Title 41, Chapter 6, Article 10, except if the Committee finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Committee may order summary suspension of a signatory's privilege to use the service mark.
- I. A signatory that loses the privilege to use the mark under subsection (A)(3) shall pay all assessments due from prior fiscal years, including penalties and interest, before regaining the privilege to use the service mark.
- J. The Committee may publish a list of signatories whose privilege to use the service mark has been suspended.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

### R3-9-605. Violation Levels; Repeated Violations

- A. Violations of R3-9-602 fall into four levels: flagrant violations, major deviations, minor deviations, and minor infractions. The Committee or its designee shall determine the level of a violation consistent with this Section.
- B. A flagrant violation occurs when a signatory buys, consigns, or otherwise accepts or handles a leafy green product and knows or should have known the product was grown, packed, shipped, processed or handled in violation of R3-9-602 and the violation:
  1. Significantly increases the risk of delivering unsafe product into commerce;
  2. Affects the integrity of the LGMA's food safety program; or
  3. In the Committee's judgment, merits more serious treatment than a major deviation based on the consideration of, as relevant:
    - a. The position of the employee responsible for the violation,
    - b. Whether the employee responsible for the violation knowingly committed the violation,
    - c. The circumstances surrounding the violation,
    - d. Whether the signatory took prompt corrective action,
    - e. Whether the signatory has committed the same or a similar violation previously, and
    - f. Any other relevant facts.
- C. A major deviation is a violation of R3-9-602 that may inhibit the maintenance of food safety, but that does not necessarily result in unsafe product.
- D. The following violations constitute at least major deviations and are potentially flagrant violations:
  1. Falsification of any record for any reason;
  2. Spitting in the field;
  3. Unclean sanitation facilities, including the presence of soiled toilet paper;
  4. Failure to:
    - a. Properly wash hands after using a restroom or returning to the field;

- b. Follow the best practices with respect to feces or fecal matter found in the field;
  - c. Follow the best practices with respect to the use of compost or animal manure, including creating and maintaining proper records related to that use;
  - d. Have a trace-back system;
  - e. Sanitize gloves and knives;
  - f. Follow a work health practices program concerning the transfer of human pathogens by workers; or
  - g. Provide a Compliance Plan, as defined in the best practices, to an auditor;
- 5. Refusing an audit; and
  - 6. Conditions for which an automatic “unsatisfactory” would be assessed by USDA if performing a GAP/GHP audit.
- E.** Violations constituting flagrant violations or major deviations are not limited to those listed in subsection (D).
  - F.** A minor deviation is a violation of R3-9-602 that the signatory can correct within five business days of the audit and that does not necessarily increase the risk of a food borne illness.
  - G.** A minor infraction is a violation of R3-9-602 that the signatory corrects before the auditor leaves the audited premises and that does not necessarily increase the risk of a food borne illness.
  - H.** The Committee or its designee may assess a signatory with a major deviation if an auditor discovers several minor deviations or minor infractions of the same type or if a signatory fails to timely submit a corrective action plan.
  - I.** Repeated major violations are limited to violations occurring during the current and prior fiscal year.

**Historical Note**

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

2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-606. Corrective Action Plans**

- A.** A signatory who commits a flagrant violation, major deviation, or minor deviation shall correct the violation and submit a corrective action plan to the Committee or its designee within five business days of receipt of the audit report noting the violation. If the Committee or its designee rejects the corrective action plan, the signatory has 24 hours to submit a revised corrective action plan.
- B.** In the case of a flagrant violation or major deviation, once the Committee or its designee accepts the signatory’s corrective action plan, an auditor shall perform an unannounced audit of the signatory within three business days.
- C.** The signatory shall comply with the corrective action plan.
- D.** Notwithstanding subsection (A), in the case of a violation that creates an immediate danger to public health, the signatory shall submit a correction action plan immediately and take necessary action to minimize the threat to public health.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

### 3-404. Marketing order and marketing agreement programs

A. A marketing order or marketing agreement applies to all producers and shippers included under the terms of the order or agreement.

B. A marketing order or marketing agreement may:

1. Provide for establishing standards for the quality, condition, size or maturity of a commodity marketed in or shipped outside this state. Standards shall not be less than the standards provided by articles 2 and 4 of this chapter and rules adopted pursuant to those articles.
2. Provide for establishing, and verifying compliance with, food safety standards.
3. Provide for plans to conduct programs for advertising and sales promotion.
4. Provide for research studies to improve production, distribution and marketing.
5. Provide for educational programs designed to inform producers and shippers about quality improvement or about practices, procedures and methods used in production, processing and marketing.
6. Provide for research and educational programs concerning health, food, nutritional, therapeutic and dietetic qualities or for developing new food products or new uses for agricultural products.
7. Provide programs to control and eradicate insects, disease and parasites.
8. Provide for establishing and regulating the use of an official brand, trade name or label.
9. Provide programs to gather and disseminate weather data to producers.
10. Provide for developing and funding programs, jointly or cooperatively, with public or private organizations, including funding marketing information services.
11. Authorize persons to participate in hearings regarding agricultural chemicals that are used by the affected commodity.

### 3-414. Powers and duties of a marketing commission or marketing committee

A. A marketing commission or marketing committee shall:

1. Collect, receive and disburse any monies to be used to administer a marketing order or marketing agreement.
2. Annually elect a chairman, secretary and treasurer from among its members.
3. Meet at least twice annually or at additional times called by the chairman or when requested by a quorum of the marketing commission or marketing committee.
4. Keep a permanent record of its proceedings and make these records available for public inspection for any lawful purpose.
5. Prescribe any assessments to be assessed within the limits prescribed in this article, the marketing order or the marketing agreement.

B. A marketing commission shall:

1. Prepare for the regulated commodity an annual report of its activities, receipts and expenditures. A copy of the annual report shall be available to any interested person on request.
2. Organize and administer any election called under this article or the marketing order.

C. A marketing commission or marketing committee may:

1. Sue and be sued as a marketing commission or marketing committee, without individual liability, for acts of the marketing commission or marketing committee within the scope of the powers and duties conferred on it by this article, the marketing order or the marketing agreement.
2. Enter into contracts to carry out the purposes of this article, the marketing order or the marketing agreement.
3. Appoint committees or subcommittees of the marketing commission or marketing committee, ex officio marketing commission or marketing committee members or advisory groups composed of representatives from organizations, institutions or businesses related to or interested in the regulated commodity.
4. Employ or retain and fix the compensation of a qualified person or qualified entity to manage the marketing order or marketing agreement, on behalf of the marketing commission or marketing committee, and other personnel that are necessary to carry out the provisions of this article, the order or the agreement.
5. Cooperate with any local, state or nationwide organization or agency engaged in work or activities similar or related to those of the commission or the committee and enter into contracts with the organizations or agencies for carrying on joint programs.
6. Make grants to research agencies to finance appropriate studies, or to purchase or acquire equipment and facilities consistent with the marketing order or marketing agreement.
7. Act jointly and in cooperation with this state or any other state or the federal government and spend monies to administer any program deemed by the commission or committee to be beneficial to the affected commodity.
8. Accept grants, donations, contributions, gifts, property or services or other assistance from public or private sources.
9. Provide educational materials to:

(a) Interested parties that are not affected persons at a charge fixed by the commission or committee commensurate with the cost of compilation, publication and issuance.

(b) Public officials without charge.

10. Return assessments to affected persons on a pro rata basis to the extent that monies collected exceed budgeted expenses.

11. Adopt rules necessary to promptly and effectively administer this article. Title 41, chapter 6 does not apply to rule making under this article, but the commission or committee shall provide fifteen days' advance notice of the meeting at which rules will be adopted. The commission or committee shall receive public testimony at the meeting regarding the rules.

12. Refer to persons regulated under a marketing order for an advisory vote the question of setting assessments or establishing or continuing any program authorized by the order.

13. Investigate and prosecute in the name of this state any legal action to enforce the collection or ensure payment of the authorized assessments.

14. Gather data or any other information the commission or committee deems necessary to administer and enforce the order or agreement.

15. Receive complaints of violations of the order or agreement and refer the complaints to the proper authorities.

16. Provide for an annual audit of its accounts by a qualified public accounting firm and, if an audit or financial statement is prepared, make the audit or financial statement available to any affected person and the auditor general on request.

**DEPARTMENT OF REAL ESTATE (F20-0501)**

Title 4, Chapter 28, Articles 4, 7, 8, and 12, State Real Estate Department



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 8, 2020

**SUBJECT: DEPARTMENT OF REAL ESTATE (F20-0501)**  
Title 4, Chapter 28, Articles 4, Education, Article 7, Compensation, Article 8, Documents, and Article 12, Developments

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### Summary

This Five Year Review Report (5YRR) from the Department of Real Estate (Department) relates to rules in Title 4, Chapter 28, Articles 4, 7, 8, and 12, regarding the Department of Real Estate. The rules address the following:

- **Article 4: Education;**
- **Article 7: Compensation;**
- **Article 8: Documents; and**
- **Article 12: Developments.**

In the previous 5YRR for these rules, the Department proposed numerous rule changes that are also in this 5YRR. The Department states that it did not complete the prior proposed course of action due to the rulemaking moratorium in Executive Order 2015-01. The Department notes that it previously requested an exemption from the rulemaking moratorium in Executive Order 2012-03 in August 2013, April 2014, and October 2014.

## **Proposed Action**

In this 5YRR, the Department initially proposed to request an exemption from the rulemaking moratorium and after conducting outreach to stakeholders, submit a rulemaking to the Council by January 2023. After an inquiry from Council staff, where staff advised the Department that this timeline would likely need to be revised, the Department advised that if the Council wishes the Department to submit a rulemaking earlier than that date, the Department would make every effort to do so. The Department further advised Council staff that its representative will be able to discuss a revised timeline at the Council's Study Session.

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 regulates the licensing of realtors in Arizona. The previous rulemaking's Economic, Small Business, and Consumer Impact Statement (EIS) was unavailable. However, the Department states that the previous rulemaking resulted in economic savings due to electronic processing of documents. Other aspects of the rules, including the education and licensing of realtors, were found to have no adverse economic impact.

The stakeholders include: the Department, the general public, real estate brokers, and real estate salespeople, real estate schools, and real estate students.

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

The Department states that the rules under review provide the least costly method of achieving their regulatory objective. The Department further states that the safety of the institutions that it oversees outweighs the costs associated with the rule.

Further, in response to an inquiry from Council staff, the Department provided additional materials regarding the fees the Department charges in comparison to other western states, a document analyzing the Department's education requirements, data regarding development/builder services, and data regarding new and renewed licenses and online usage. Those materials are included for the Council's review.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules under review over the last five years. However, the Department states that it had a consistent dialogue

with real estate professionals and trade association leaders in prior years about the benefit of amending rules to provide greater clarity to the industry and public.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department states that the rules are generally clear, concise, understandable, consistent with other rules and statutes, and effective, with certain exceptions. In its report, the Department identifies those rules which it states could be improved.

In terms of **clarity, conciseness, and understandability**, the Department states that the following rules could be improved:

- R4-28-401 (Prelicensure Education Requirements; Waiver);
- R4-28-402 (Continuing Education Requirements; Waiver; Distance Learning);
- R4-28-404 (Real Estate School Requirements, Course and Instructor Approval);
- R4-28-701 (Compensation Sharing Disclosure);
- R4-28-A1203 (Flood and Drainage; Land Uses; Adverse Conditions); and
- R4-28-B1202 (Conditional Sales Exemption).

In terms of **consistency with other rules and statutes**, the Department states that the following rules could be improved:

- R4-28-401 (Prelicensure Education Requirements; Waiver);
- R4-28-B1206 (Filing with HUD); and
- R4-28-B1207 (Subsequent Owner).

In terms of **effectiveness**, the Department states that the following rules could be improved:

- R4-28-401 (Prelicensure Education Requirements; Waiver);
- R4-28-402 (Continuing Education Requirements; Waiver; Distance Learning);
- R4-28-803 (Contract Disclosure);
- R4-28-804 (Rescission of Contract);
- R4-28-A1201 (Development Name; Lot Sales; Applicant); and
- R4-28-A1204 (Utilities).

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced through established policies and procedures as prescribed by the rules and statutes. However, in its report, it identifies certain rules that have issues with enforcement:

- R4-28-401 (Prelicensure Education Requirements; Waiver);
- R4-28-402 (Continuing Education Requirements; Waiver; Distance Learning);

- R4-28-404 (Real Estate School Requirements, Course and Instructor Approval);
- R4-28-701 (Compensation Sharing Disclosure);

7. **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 no rule reviewed in this 5YRR is more stringent than corresponding federal law or state law. To make this determination, the Department states that it analyzed Title 32, Chapter 20 of the Arizona Revised Statutes, applicable federal laws and regulations set by the federal Consumer Financial Protection Bureau (CFPB), the Real Estate Settlement Procedures Act (RESPA), and the Fair Housing Act, and neighboring state agencies that regulate the real estate industry.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules under review were adopted prior to July 29, 2010.

9. **Conclusion**

Council staff finds that the Department conducted an adequate analysis of its rules pursuant to A.R.S. § 41-1056. Council staff notes that the Department identifies numerous rules that can be amended to improve their clarity, conciseness, understandability, and effectiveness. The Department advised Council staff that it is willing to move up the timeframe to improve these rules, and Council staff encourages the Council to discuss a timeframe with the Department that would result in faster improvement of the rules while also allowing the Department to solicit stakeholder feedback. Council staff recommends approval of this report.



**STATE OF ARIZONA**  
**DEPARTMENT OF REAL ESTATE**

**DOUGLAS A. DUCEY**  
GOVERNOR

**JUDY LOWE**  
COMMISSIONER

100 N. 15<sup>TH</sup> AVENUE, SUITE 201, PHOENIX, ARIZONA 85007  
PHONE: 602. 771-7760 FAX: 602. 771.7023

February 21, 2020

Ms. Nicole Sornsin, Council Chairperson  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Re: Five-Year-Review Report for A.A.C. Title 4, Chapter 28, Articles 4, 7, 8, & 12

Ms. Sornsin,

This letter serves to transmit the Arizona Department of Real Estate's Five-Year Review Report covering Title 4, Chapter 28, Articles 4, 7, 8, & 12 as required by A.R.S. § 41-1056. Furthermore, I certify that the Department is in compliance with A.R.S. § 41-1091.

Should you have any questions about the content of the report, please contact Louis Dettorre, Deputy Commissioner at (602) 771-7769 or [ldettorre@azre.gov](mailto:ldettorre@azre.gov).

Sincerely,

A handwritten signature in cursive script that reads "Judy Lowe".

Judy Lowe  
Commissioner  
Arizona Department of Real Estate

cc: Krishna Jhaveri, Staff Attorney, GRRC, [Krishna.jhaveri@azdoa.gov](mailto:Krishna.jhaveri@azdoa.gov)

### **Information That Is Identical Within Groups of Rules**

This section of the Department of Real Estate's five-year rule report summarizes the review of A.A.C. Title 4, Chapter 28, Articles 4, 7, 8, and 12. The following information is identical for each group of rules listed. Because this information is the same for each rule it is not included in the analysis of each individual rule within the group.

#### **Article 4. Education**

- R4-28-401. Prelicensure Education Requirements; Waiver
- R4-28-402. Continuing Education Requirements; Waiver; Distance Learning
- R4-28-403. License Examinations
- R4-28-404. Real Estate School Requirements, Course and Instructor Approval
- R4-28-405. Expired

#### **Article 7. Compensation**

- R4-28-701. Commission Sharing Disclosure

#### **Article 8. Documents**

- R4-28-801. Repealed
- R4-28-802. Conveyance Documents
- R4-28-803. Contract Disclosures
- R4-28-804. Rescission of Contract
- R4-28-805. Public Report Receipt

#### **Article 12. Developments**

- R4-28-1201. Renumbered
- R4-28-1202. Repealed
- R4-28-1203. Renumbered
- R4-28-1204. Repealed

#### **PART A. Application for Public Report, Certificate of Authority, or Special Order of Exemption**

- R4-28-A1201. Development Name; Lot Sales; Applicant
- R4-28-A1202. Development Map; Location; Land Characteristics
- R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions
- R4-28-A1204. Utilities
- R4-28-A1205. Water Supply
- R4-28-A1206. Sewage Disposal
- R4-28-A1207. Streets and Access
- R4-28-A1208. Flood Protection and Drainage Improvements
- R4-28-A1209. Common, Community, or Recreational Improvements
- R4-28-A1210. Master Planned Community
- R4-28-A1211. Assurances For Completion and Maintenance of Improvements
- R4-28-A1212. Schools and Services
- R4-28-A1213. Property Owners' Association
- R4-28-A1214. Development Use

R4-28-A1215. Development Sales  
R4-28-A1216. Title Report and Encumbrances  
R4-28-A1217. ADEQ Approval  
R4-28-A1218. Registrations in Other Jurisdictions  
R4-28-A1219. Condominium Developments  
R4-28-A1220. Foreign Developments  
R4-28-A1221. Cemetery Developments  
R4-28-A1222. Membership Camping Developments  
R4-28-A1223. Affidavit

**PART B. General Information**

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands  
R4-28-B1202. Conditional Sales Exemption  
R4-28-B1203. Material Change; Public Report Amendments  
R4-28-B1204. Cemetery Notice; Amendments  
R4-28-B1205. Contiguous Parcels  
R4-28-B1206. Filing with HUD  
R4-28-B1207. Subsequent Owner  
R4-28-B1208. Public Report Correction  
R4-28-B1209. Options; Blanket Encumbrances; Releases  
R4-28-B1210. Earnest Money  
R4-28-B1211. Recordkeeping

**A. Authorization:** The Department of Real Estate’s general authority derives from A.R.S. § 32-2107(F), which provides general authority to the Commissioner to make rules.

**C. Effectiveness:** The objectives of the following rules are effectively met. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. There have been no changes to the rules in this report since the previous five-year rule review was submitted in 2015. The Department has determined through analysis and practice that the rules achieve their regulatory purpose and are effective. The rules in Articles 4, 7, 8, and 12 are effective with the exceptions noted in the analysis of individual rules in Articles 8 and 12.

**D. Consistency:** The rules in Articles 4, 7, 8, and 12 are generally consistent as written, with the exceptions noted for certain rules discussed in the analysis of individual rules. Analysis was conducted of A.A.C. Title 4, Chapter 28, applicable real estate substantive policy statements, agency advisories, and the governing statutes under Title 32, Chapter 20. The Department has consulted with its staff, and engaged in several focused stakeholder meetings to solicit input on all Department rules between July and October 2014 prior to submitting a request for an exception to the rulemaking moratorium on October 16, 2014. The exception request was not granted. Specific to this report, Articles 4, 7, 8, and 12 were discussed during these stakeholder meetings. Two other requests for an exception to the rulemaking moratorium including these rules were submitted in August 2013 and April 2014 respectively.

**E. Enforcement:** The following rules are enforced through established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written. The Department spends considerable time ensuring compliance with public report requirements and approving licenses in general - including approving educational courses, instructors, and schools that share the same objective of protecting the public by licensing professional and reputable real estate brokers, salespersons, land developers, and others under the Commissioner’s jurisdiction. New real estate business models and technology-based services continue to present challenges for the appropriate enforcement of the rules. New technology advancements, and use in the real estate industry will require further definition and guidance in rule at some point. To date, the Department has been able to address these issues with the current rules, substantive policy statements, Commissioner’s advisories, and through collaboration with all stakeholders, including the various national, state, and local professional trade associations.

**F. Clarity, Conciseness, and Understandability:** The rules in this report are clear, concise, and understandable with the exception of suggested modifications to rules in Articles 4, 7, and 12. The actions proposed in the Course of Action section will enhance the clarity, conciseness and understandability of these rules.

**G. Criticisms Received within the Last Five Years:** The Department has not received any written criticisms of these rules during the past five years. However, the Department had consistent dialogue with real estate professionals and trade association leaders in prior years about the benefit of amending rules to provide greater clarity to the industry and public. A series of workgroups commenced at the time of the last five-year rule review, and after the previous report was finalized. The latest work group reviewed the Department’s rules and suggested updates that are still relevant today. The work group did not find consensus, however an exception from the rule-making moratorium was not granted. The Department has not determined the appropriate time to pursue engaging industry leaders for another rules work group focused on the consideration of amending terms and definitions, reviewing opportunities to reduce unnecessary regulatory burden, and creating greater consistency with statute.

**H. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since their currently effective text was approved by GRRC.

	FY08	FY09	FY14	FY15	FY16	FY17	FY18	FY19
<b>Appropriation</b>	\$4,614,000	\$3,686,700	\$2,988,700	\$2,988,700	\$2,985,200	\$3,004,000	\$3,028,000	\$2,911,700
<b>*1 Revenue General Fund Contribution</b>	\$6,194,000	\$4,882,900	\$2,639,24	\$3,713,144	\$4,119,660	\$4,005,597	\$3,854,253	\$3,694,366
<b>**2 Avg. Filled FTE</b>	62	54	32.5	32.5	28.25	31.25	31.25	28.25

There has been no adverse economic impact of these rules on the Department, the regulated community or the public with the rules in this Article. The “Licensed Individuals and Entities” count completed for January 2020 stated as follows: total active individuals 60,118; total inactive individuals 14,777; total individuals in grace period 5,410; total individual licensees 80,305. The report also includes information for entities: total active entities 7,317; total inactive entities 464;

total entities in grace period 650; total entity licensees 8,431. In July 2015 the total active individuals was 69,207, including licensees in their one year grace period. The Department was reduced to 57 FTEs in 2005, and in 2013 to the current total of 37 FTEs. The authorized General Fund appropriation for the Department has decreased from a high of approximately \$4.6 million in FY2008, and has remained consistent from FY2014 to FY2019 at approximately \$2.9 to \$3 million. If the FY2021 budget passes in its current form, the Department will remain at this level. The Department generates revenue through licensing fees, which are contributed to the General Fund.

\*<sup>1</sup>Includes civil penalties/ Year to date

\*\*<sup>2</sup>Authority to fill up to 37 FTE

#### **Article 4. Education**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community, or the public.

The Administrative Rules in Article 4, governing Education, inform real estate instructors, administrators, and schools of the specific rules to comply with the statutory laws in A.R.S. Title 32, Chapter 20. The rules generally have minimal economic impact upon small businesses and consumers. The scope of this article applies to 271 real estate schools (increase of 15% since the last five year rule review), 257 schools offering continuing education courses (increase of 28% since the last five year rule review), 2,819 real estate courses (increase of 9% since the last five year rule review), and 864 real estate school instructors (increase of 3% since the last five year rule review).

From July 1, 2018 to June 30, 2019, the Department received the following number of applications for each approval type: 715 course approval applications, 93 distance learning approval applications, 81 school approval applications, and 558 instructor approval applications.

#### **Article 7. Compensation**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community, or the public.

The Administrative Rule in Article 7 governing Compensation provides clarity to the public, licensees, and clients by stipulating who receives compensation from a transaction. The scope of this article applies to approximately 13,109 real estate brokers as of February 2, 2020.

#### **Article 8. Documents**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community, or the public.

There is a positive economic impact from these rules because the procedures in handling electronic and web-based records have been used under the Commissioner’s advisory authority, and have resulted in an economic savings to all parties. The electronic processes will continue to minimize ADRE staff requirements in auditing and investigations. Furthermore, requiring the

public report license number to be included on all applicable sale or lease contracts provides security for the consumer that the transaction is regulated, and not fraudulent, at no additional cost to the developer. The scope of this article applies to approximately 13,109 brokers and 61,786 salespersons.

### **Article 12. Developments**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of the rules on the Department, the regulated community or the public.

In FY 2019 the Development Services Division issued 741 Public Report Disclosures (20% increase from FY 2018), received 813 subdivision applications (24% increase from FY 2018), and issued 227 exemption requests (31% increase from FY 2018). The previous report contemplated reduction of timeframes to promote the faster delivery of subdivision approvals. The Department implemented the Arizona Management System in 2015, which among other things focuses on streamlining processes, and reducing timeframes to deliver approvals. For example, timeframes prescribes the overall timeframe for Public Disclosure Report approvals at 100 days where the Department maintains average approvals under 4.5 days. The Administrative Code prescribes the overall timeframe for Amended Public Disclosure Report approvals at 60 days, where the Department maintains average approvals under 15 days.

**I. Analysis Submitted to the Agency:** There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state’s business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

**J. Completed Previous Five Year Rule Review:** This group of rules was the subject of a normal five-year rule review in 2015, which the Department completed. The Department proposed changes that are also reflected in this normal five-year rule review. The rulemaking was not completed due to the rulemaking moratorium set by Executive Order 2015-01. As previously stated, the Department requested an exception from the rulemaking moratorium set by Executive Order 2012-03 in August 2013, April 2014, and October 2014. If an exception from the rule-making moratorium is granted, the Department will pursue engaging industry leaders and stakeholder groups again with the goal of submitting rules to council by January 2023.

**K. Probable Benefits of the Rule:** The benefits of the rules in Articles 4, 7, 8, and 12 outweigh the probable costs of the rules, and imposes the least burden and cost on the persons regulated, as is necessary to achieve the regulatory objective of ensuring safety and soundness in state chartered institutions. The rules covering the subject matter are necessary to fulfill the agency’s mission of protecting the public.

**L. Stringency of the Rule:** No rule in this report was considered to be more stringent than related federal rules or state statutes. This was determined by analyzing Title 32, Chapter 20, Arizona Revised Statutes, applicable federal laws and rules including regulations set by the Consumer Financial Protection Bureau (CFPB), the Real Estate Settlement Procedures Act (RESPA), Fair Housing Act, and neighboring state agencies that are tasked with regulating the

real estate industry, and protecting the public. The individual rules section will address areas of rule that do not clarify legislative intent derived from state statute, as well changes in federal law that are not reflected in state statutes. There are areas identified in the *Course of Action* section that could further reduce regulatory burden.

**M. Compliance with A.R.S. § 41-1037:** The general permit requirements of A.R.S. § 41-1037 are not applicable to these rules, because all of the rules were adopted before July 29, 2010.

**N. Course of Action:** The Department submitted exception requests to the Governor's Office in 2013 and 2014 to proceed with opening a rulemaking docket and obtain approval to file final rules from the Governor's Regulatory Review Council. The requests included rules in the Articles covered in this report with the intent of reducing regulatory burden, addressing legislative changes, and creating greater efficiencies. Though the letters submitted were not identical, the intent of the requests was the same. If an exception from the rule-making moratorium is granted, the Department will pursue engaging industry leaders and stakeholder groups again with the goal of submitting rules to council by January 2023. Pursuant to Executive Order 2020-02, the Department will provide the Governor's office, by January 2023, with a review of the administrative rules governing the Department. This review will include any requests for exception to the moratorium on rulemaking to amend and/or repeal the discussed rules.

## Analysis of Individual Rules

### R4-28-401. Prelicensure Education Requirements; Waiver

**A. Authorization:** The Department of Real Estate’s general authority for the rule is found in A.R.S. § 32-2107(F). More specifically, A.R.S. § 32-2124 establishes requirements for licensure as real estate salespersons and brokers. A.R.S. § 32-2135 establishes the Commissioner's authority to license and regulate providers of real estate courses, to approve individual courses and instructors, and provides that the Commissioner may withdraw or deny certification or approval of real estate instructors for specified conduct.

**B. Objective:** The objective of this rule is to specify that a real estate candidate must either complete the required prelicensure education or, if granted a waiver of the prelicensure courses, complete a 27-hour Arizona specific course. It also prescribes the information to be provided by a candidate seeking a waiver of the prelicensure course.

**C. Effectiveness:** The stated objectives of the rule are effectively met, except the waiver portion of the rule, because it provides notice of the educational requirements for real estate license candidates, and demonstrates what information is required in order to request a Commissioner’s waiver of the required prelicensure education. The real estate industry suggested removing the waiver language during the referenced stakeholder meetings. The process for requesting a waiver is stipulated in A.R.S. § 32-2124. There are no current course offerings for 27-hour Arizona specific education only.

**D. Consistency:** The rule could be made more consistent with statute by defining “live classroom” pursuant to A.R.S. §§ 32-2124 and 32-2135, by further stating course offerings and exam content pursuant to A.R.S. § 32-2124, and by updating the rule to reflect legislative intent regarding military spouse and out-of-state license recognition eligibility, for certain exemptions pursuant to A.R.S. § 32-4302.

**E. Enforcement:** The Department does not receive many, if any waiver requests due to individuals taking advantage of the statutory changes related to out-of-state license recognition.

**F. Clarity, Conciseness, and Understandability:** The rule would be more clear, concise, and understandable to the real estate industry and public when the Department submits a proposed rule revision to establish definition and guidelines for “live classroom”, clarify course offerings and exam content pursuant to statute, outline the process for course certifications pursuant to A.R.S. §§ 32-2135 and 32-2124(B)(C), and clarify distance learning course requirements. There are also opportunities to expand course offerings and educational content by amending this rule to add subject matter recommended by the real estate industry.

**K. Probable Benefits of the Rule:** The benefits of this rule outweigh the burden or costs to the individuals regulated by the rule. Prelicense real estate education is required by jurisdictions throughout the country at an amount commensurate to Arizona. Prelicensure education standards are necessary because of the need to ensure that individuals involved in real estate transactions are knowledgeable on matters related to real estate transactions. With the constant changes in the

real estate practice, it is appropriate for a candidate to complete specific real estate education to protect the public pursuant to A.R.S. §§32-2124 (B) and (C). The real estate industry laws and practices are changing significantly, such that there must be current information and instruction delivered to the licensee entering the real estate profession in Arizona. Licensees being granted a waiver for pre-license education may not be current on the practices necessary to protect the public.

**N. Course of Action:** The Department recommends the rule be amended and anticipates submitting the amended rules to G.R.R.C by January 1, 2023. The Department anticipates amending R4-28-401 to make it consistent with A.R.S. §§ 32-2124, 32-2135, and 32-4302. This would provide a definition for “live classroom”, update the rule to reflect legislative intent regarding military spouse and out-of-state license recognition eligibility, outline the process for course certifications, and address opportunities to expand course offerings and educational content.

#### **R4-28-402. Continuing Education Requirements; Waiver; Distance Learning**

**A. Authorization:** The Department of Real Estate’s general authority for the rule is found in A.R.S. § 32-2107(F). Specific authority is established in A.R.S. §§ 32-2130 and 32-2135.

**B. Objective:** The objective of this rule is to establish that a real estate renewal applicant must take specified hours in various categories of approved courses. The procedure for requesting a waiver of some or all of the continuing education (CE) courses, and the circumstances under which the Commissioner will grant a waiver are specified. It also establishes requirements for submission of a distance learning course for approval as a CE course.

**C. Effectiveness:** The rule generally achieves its objective by establishing minimum credits required in identified course categories, and by elaborating on the topics that comprise these categories. The language in “section A” does not state that a school seeking approval of a course for real estate CE credit, under any of the categories, must explain in its application that the majority of the course content corresponds to the topics in (A)(1). Some schools seem to have the mistaken impression that any course qualifies for CE credit. The current distance learning course provisions are inadequate to identify poor quality distance learning courses and excessive Department staff time is expended reviewing distance learning courses, identifying delivery and content problems and labeling deficiencies that the applicant school should have identified before submitting the course application.

**E. Enforcement:** As stated in the 2015 review, the Department still experiences difficulty in enforcing this rule due to the mandated categories not being current to industry need, and a lack of clear approval criteria. Both of these require staff time to review, evaluate, and respond to and minimize the Department’s ability to determine the education and knowledge level of the licensee. Enforcement would be improved if the Department were able to update CE course offerings and requirements.

**F. Clarity, Conciseness, and Understandability:** The rule will be more clear, concise and understandable if descriptions of course categories and the conditions were updated. Some school operators have difficulty complying with the provisions relating to distance learning courses, presumably because they do not understand them. Previously submitted exception requests sought to address these issues. Some real estate schools and course providers have said that the required categories are not current to industry needs, and are not defined in sufficient detail to encourage school operators to develop courses for ADRE approval.

**N. Course of Action:** The Department recommends the rule be amended, and anticipates submitting the amended rules to G.R.R.C by January 1, 2023. The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by amending the rule to update descriptions, and add clarity to course categories.

#### **R4-28-403. License Examinations**

**A. Authorization:** The Department of Real Estate's general authority for the rule is found in A.R.S. § 32-2107(F). Specific authority is established in A.R.S. § 32-2130.

**B. Objective:** The objective of this rule is to establish the minimum frequency with which the state license examination will be administered, advise license candidates that they will be notified only whether they passed the examination (with the notification for an applicant who did not pass the exam showing the score for the examination and the relative score for each content area), and inform them that they must meet statutory qualifications for licensure, even though they may have successfully passed the examination. The Commissioner must ascertain that the applicant has an appropriate knowledge of English, reading, writing, spelling, arithmetic, legal implications, agency, contract law, financial fiduciary obligations, business, ethics, and any other areas the Commissioner deems necessary and proper.

#### **R4-28-404. Real Estate School Requirements, Course and Instructor Approval**

**A. Authorization:** The Department of Real Estate's general authority for the rule is found in A.R.S. § 32-2107(F). Specific authority is established in A.R.S. § 32-2135.

**B. Objective:** The objective of this rule is to establish the information required for school approval (subsection A), for course approval (subsection B), and for instructor approval (subsection C). It establishes what records a school must maintain and for how long (subsection D), what information a school shall make available to students before enrollment (subsection E), and identifies what activities may be considered job placement services that may be offered by a school (subsection F). It concludes with describing circumstances under which the Department may and shall investigate and observe the classes offered at or by, any school owner, operator, or instructor (subsection G), and prescribes what changes in school ownership, location, or qualifications of the school owner, operator, or director, and instructor qualifications require notice to the Department (subsection H).

**E. Enforcement:** As stated in the 2015 review, the Department feels that the rule still falls short of promoting the highest caliber of school administrator, instructor and curriculum. The

rule lacks definition of a school operator and school administrator. In addition, the rule lacks specific qualifications to operate a real estate school. The rule must be enhanced to clarify the approval criteria for a school, and its administrator, by clearly stating the responsibility of the school. The approval criteria must be clarified to allow the schools to enforce the quality and performance of the instructors affiliated with the schools, and ensure that the course content being taught is accurate and current.

**F. Clarity, Conciseness, and Understandability:** The rule would be more clear, concise and understandable if definitions and further description of school requirements set in statute were clarified and updated in the rule. Some school operators have difficulty complying with the provisions relating to distance learning courses, presumably because they do not understand them. Previously submitted exception requests sought to address these issues.

**N. Course of Action:** The Department recommends the rule be amended and anticipates submitting the amended rules to G.R.R.C by January 1, 2023. The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by amending the rule to clarify and update real estate school, course, and instructor approval processes.

#### **R4-28-701. Compensation Sharing Disclosure**

**A. Authorization:** The Department of Real Estate's general authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. § 32-2151.

**B. Objective:** The objective of this rule is to ensure all parties in a transaction know who is receiving compensation from a licensee.

**E. Enforcement:** Department investigations and auditing functions verify the enforcement of the rule. As stated in the 2015 report, public complaints are often received concerning undisclosed compensation by undisclosed third -party transactions; i.e. a licensee may represent themselves to be an investor, thereby allowing them to buy and flip property without disclosing who the original owner was or the financial benefits to themselves.

**F. Clarity, Conciseness, and Understandability:** The rule is clear, concise, and understandable, however, there would be clear benefit to the public if there were additional statutory disclosure requirements in the rule to address the issues presented in a complaint.

**N. Course of Action:** Pursuant to Executive Order 2020-02, the Department will review the rule by January 1, 2023 to access if a proposed amendment will be offered in its exception request.

#### **R4-28-802. Conveyance Documents**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. § 32-2151.

**B. Objective:** The objective of the rule is to implement procedures to confirm the statutory requirements that all parties have copies of transaction documents, require that all offers must be presented in accordance with a contract, and identify documents that must be maintained in transaction files pursuant to statute.

**C. Effectiveness:** The rules are generally effective in achieving the objectives to require licensees to present all offers and convey all documents to all principal parties, and to retain all documents per statute; developers to receive signed acknowledgment of delivery of the public report and disclosure of the disposition of earnest money to a buyer, and sellers of unimproved lots and timeshares to disclose rescission periods for nullifying contracts.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by codifying the rule with the Department's Substantive Policy Statement. The Department plans to submit its request for exception by January 1, 2023. The objective of the recommended amendments would codify the Commissioner's several advisories and substantive policy statements that apply applicable statutes, A.R.S. §§ 32-2151.01, 32-2175, and rules to electronic and web based document preparation, distribution, and storage and transaction management systems. The recommended amendments will satisfy the objectives of, 1) Codifying the Commissioner's existing advisory and substantive policy statements on electronic procedures applicable to the rules (R4-28-802); 2) Providing protection to the public by requiring developers to identify the public report license number on all contract documents (R4-28-803).

#### **R4-28-803. Contract Disclosure**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2107, 32-2183, 32-2197.02, 32-2197.05, 32-2197.08.

**B. Objective:** The objective of the rule is to establish procedures for transferring interests in land under development.

**C. Effectiveness:** This rule generally achieves its objective. However, the purchaser would benefit if the rule were amended to require the Public Report License number be included on the purchase documents.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by recommending the rule improve the protection of the inclusion of the potential purchaser through the availability of the Public Report for the development, including the Public Report license number on the documents. The proposed amendment will ensure that the purchaser of such property has the license number under which the interest is being transferred. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-804. Rescission of Contract**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F).

**B. Objective:** The objective of this rule is to ensure that purchasers of real estate interests in unimproved land, land under development, or timeshares are aware that they have a statutory right to rescind the contract under certain conditions.

**C. Effectiveness:** This rule generally achieves its objective. However, the rule needs to be amended to clarify the statutory rescission period for timeshare transactions, which was increased from seven days to ten days in the 2019 Legislative Session.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by recommending the rule be amended to reflect the statutory rescission days as ten. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-805. Public Report Receipt**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107. Specific statutory authority includes A.R.S. §§ 32-2183, 32-2195.03, and 32-2197.08.

**B. Objective:** The objective of this rule is to specify the language developers will use in the public report receipt that prospective purchasers sign before executing a binding contract to purchase or lease an interest in the development.

#### **R4-28-A1201. Development Name; Lot Sales; Applicant**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-2183, 32-2194.01, 32-2194.03, 32-2195, 32-2195.01, 32-2197.02, 32-2197.08, and 32-2198.01.

**B. Objective:** The objective of the rule is to provide procedures for filing applications for a public report, certificate of authority, or special order of exemption.

**C. Effectiveness:** The rules are generally effective in achieving the objective of ensuring persons applying for a Public Report comply with the procedure requirements, however, there is a deficiency in not requiring an email address (if available), and the rule should not require that foreign limited liability companies show proof of being in good standing with the Arizona Corporation Commission.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by recommending the rule require an email address (if available) be provided by the applicant, and removing the requirement that foreign limited liability companies show proof of being in good standing with the Arizona Corporation Commission. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-A1202. Development Map; Location; Land Characteristics**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195.03, and 32-2197.02.

**B. Objective:** The objective of this rule is to provide procedures for filing a development map.

#### **R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.

**B. Objective:** The objective of the rule is to provide procedures for disclosing flood areas and other adverse conditions concerning property.

**F. Clarity, Conciseness, and Understandability of the Rule:** The stated objectives of the rule are effectively met, however additional clarity could be added with additional disclosure requirements to increase disclosure in Public Reports to address earth fissures and pipelines. Past stakeholder meetings included discussions with the industry to address these points.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by proposing an amendment to add disclosure requirements in Public Reports to address earth fissures and pipelines. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-A1204. Utilities**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.

**B. Objective:** The objective of the rule is to provide procedures for disclosing information concerning utility services.

**C. Effectiveness:** The rule is generally effective in achieving the objective of requiring the disclosure of information about the utilities (i.e. which company served the area). However, it does not always require that the developer disclose through the Public Report whether utilities are available to a property.

**N. Course of Action:** Pursuant to Executive Order 2020-02, the Department will review the rule by January 23, 2023 to assess if a proposed amendment will be offered in its exception request.

#### **R4-28-A1205. Water Supply**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2183.01, 32-2194.01, 32-2195, 32-2197.02 and 32-2197.08.

**B. Objective:** The objective of the rule is to provide procedures for disclosing water resources.

#### **R4-28-A1206. Sewage Disposal**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183.01, 32-2195 and 32-2197.02.

**B. Objective:** The objective of the rule is to provide procedures for disclosing sewage disposal.

#### **R4-28-A1207. Streets and Access**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185.01, 32-2195, 32-2197.02 and 32-2198.01.

**B. Objective:** The objective of the rule is to provide procedures for disclosing access to property.

#### **R4-28-A1208. Flood Protection and Drainage Improvements**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, and 32-2195.

**B. Objective:** The objective of the rule is to provide procedures for disclosing flood protection and drainage improvements.

#### **R4-28-A1209. Common, Community, or Recreational Improvements**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2197.02, 32-2197.08, and 32-2198.01.

**B. Objective:** The objective of the rule is to provide procedures for disclosing common, community, and recreational facilities.

#### **R4-28-A1210. Master Planned Community**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183 and 32-2194.03.

**B. Objective:** The objective of the rule is to provide procedures for disclosing offsite improvements in master planned communities.

#### **R4-28-A1211. Assurances for Completion and Maintenance of Improvements**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2183.04, 32-2193.02, 32-3294.01, 32-2194.03, 32-2195.03, 32-2197.02, 32-2197.05, and 32-2198.08.

**B. Objective:** The rule provides procedures for providing assurance of completion and maintenance of common areas thereafter.

**N. Course of Action:** Pursuant to Executive Order 2020-02, the Department will review the rule by January 1, 2023 to assess if a proposed amendment will be offered in its exception request.

#### **R4-28-A1212. Schools and Services**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority is derived from A.R.S. § 32-2181.

**B. Objective:** The objective of the rule is to provide procedures for disclosing locations of schools and information about public and emergency services.

#### **R4-28-A1213. Property Owners' Association**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, and 32-2198.14.

**B. Objective:** The objective of the rule is to provide procedures for disclosing information about property owner associations.

#### **R4-28-A1214. Development Use**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2195, and 32-2197.08

**B. Objective:** The objective of the rule is to provide procedures for disclosing whether lots will be sold or leased, their proposed use, whether they are in an open range area, and whether mineral rights and other material issues exist.

#### **R4-28-A1215. Development Sales**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2181.03, 32-2185, 32-2195, 32-2195.03 and 32-2197.08.

**B. Objective:** The objective of the rule is to provide procedures for the required information about the manner in which the sale or lease of lots within the development will be conducted, including the following: how title will be conveyed; whether cash sales are permitted and, if so, when buyer takes title, where deposits and earnest monies will be held; whether the developer has access to earnest money and deposits; under what conditions the funds are released; when the purchaser will be permitted to use and occupy the lot; an explanation if title will not be conveyed free and clear of all liens; the estimated average sales price; where transaction records will be stored; and details about the lease if the property is to be leased.

#### **R4-28-A1216. Title Reports and Encumbrances**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2185, 32-2185.01, 32-2194.01, 32-2195, 32-2195.03, 32-2197.08, 32-2197.12, and 32-2198.01.

**B. Objective:** The objective of the rule is to identify required information about the developer's title to the property, including; a current title report; copies of all liens and encumbrances; and recorded and unrecorded documents reflected in the title report or known to applicant, such as, restrictions, trust agreements, options, and maps pertaining to the development

#### **R4-28-A1217. ADEQ Approval**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority is derived from A.R.S. § 32-2181.

**B. Objective:** The objective of the rule is to inform developers that approval of their subdivision or timeshare project by the Arizona Department of Environmental Quality is required.

#### **R4-28-A1218. Registrations in Other Jurisdictions**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority derived from A.R.S. § 32-2197.02.

**B. Objective:** The objective of the rule is to inform the Department of other jurisdictions where the subject development is registered for approval to sell.

#### **R4-28-A1219. Condominium Developments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 33-1215 and 33-1219.

**B. Objective:** The objective of the rule is to require proof that the development of a condominium may legally commence.

#### **R4-28-A1220. Foreign Developments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2183.01, 32-2183.04, 32-2185.01, 32-2185.06, 32-2194.15, 32-2195, 32-2195.05, 32-2197.02, 32-2197.07, 32-2197.08, 32-2197.17, and 32-2198.14.

**B. Objective:** The objective of the rule is to inform developers of information that will be required to seek approval to advertise, promote, or sell interests in a development located outside Arizona to residents of this state.

#### **R4-28-A1221. Cemetery Developments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2194.01, 32-2194.03, 32-2194.24, 32-2194.25, 32-2194.26, 32-2194.27, 32-2194.28, 32-2194.29, and 32-2194.30.

**B. Objective:** The objective of the rule is to require financial information concerning management and funding of a cemetery development and its maintenance.

#### **R4-28-A1222. Membership Camping Developments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2198.01, 32-2198.03, 32-2198.08 and 32-2198.14.

**B. Objective:** The objective of the rule is to identify information and documentation that is required from a person (including an entity) that wishes to develop a regulated membership campground.

#### **R4-28-A1223. Affidavit**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2183, 32-2194.01, 32-2195, 32-2197.02, and 32-2198.01.

**B. Objective:** The objective of the rule is to inform developers that they are required to execute an affidavit attesting to the truth of the information they have provided in their application for a public report or certificate of authority.

#### **R4-28-B1201. Expedited Registration for Improved Subdivision Lots and Unsubdivided Land**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2182, 32-2183, 32-2183.04, 32-2184, 32-2185.01, 32-2195.01, 32-2195.03, 32-2195.04 and 32-2195.10.

**B. Objective:** The objective of the rule is to provide procedures to expedite an application for a public report.

#### **R4-28-B1202. Conditional Sales Exemption**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.01, 32-2181.02, 32-2181.03, 32-2182, 32-2183, 32-2183.01, 32-2183.04, 32-2184, 32-2185.01, 32-2185.02, 32-2185.06, 32-2195, 32-2195.01, 32-2195.03, 32-2195.04, 32-2195.05, and 32-2195.10.

**B. Objective:** The objective of the rule is to provide procedures to allow sale of lots before a public report is issued.

**F. Clarity, Conciseness, and Understandability:** The rule is clear and concise, and understandable, however, there would be clear benefit to the public if the name of this exemption was changed to the industry understood term “Special Order of Exemption,” which will incorporate conditional sales exemptions, as well as, lot reservations. The amendment would outline what is required in order to apply for these two exemptions. It will also denote the circumstances under which these exemptions will expire, and provide an opportunity for a voluntary suspension of sales by the developer, or owner. The title for the rule would also need to be updated.

**O. Course of Action:** Pursuant to Executive Order 2020-02, the Department will review the rule by January 1, 2023 to assess if a proposed amendment will be offered in its exception request.

#### **R4-28-B1203. Material Change; Public Report Amendments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2182, 32-2183.04, 32-2184, 32-2194.10, 32-2195.01, 32-2195.03, 32-2195.10, and 32-2197.04.

**B. Objective:** The objective of the rule is to inform developers of the requirements for providing notice of changes and amending the public report. The rule clearly identifies the required information to notify the Department of the change, and to amend the development's public report when required.

#### **R4-28-B1204. Cemetery Notice; Amendments**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. § 32-2194.01 and 32-2194.10.

**B. Objective:** The objective of the rule is to inform cemetery owners and operators of their obligation under the statute to notify the Department of changes to the cemetery, its owners, or operator, by amending the information previously submitted to the Department.

#### **R4-28-B1205. Contiguous Parcels**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-3181 and 32-2181.02.

**B. Objective:** The objective of the rule is to clarify that the Department will count all purchases of contiguous lots in a subdivision by the same buyer as a single lot.

#### **R4-28-B1206. Filing with HUD**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181 and 32-2181.02.

**B. Objective:** The objective of the rule is to clarify that developers must comply with United States Housing and Urban Development Department (HUD) mandates if the development is to be certified by HUD.

**D. Consistency:** The rule is no longer consistent with federal law. The Consumer Financial Protection Bureau is now tasked with the mandates previously established by HUD.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-01 by amending the title and rule to “Filing with the Consumer Financial Protection Bureau (CFPB)” to clarify that developers must file and comply with CFPB. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-B1207. Subsequent Owner**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-3281, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

**B. Objective:** The objective of the rule is to require a developer who acquires 6 or more lots in a subdivision/unsubdivided land, or 12 or more shares in a time-share development, to obtain a new public report before reselling the lots or shares.

**D. Consistency:** Consistency of the rule with statute could be improved by updating the rule to reflect legislation passed in 2014 regarding unsubdivided land. When counting the number of parcels or fractional interests sold in consideration of real estate subdividing laws, a lot, parcel or fractional interest, as defined by law, that is sold ten or more years after the date of the last lot, parcel or fractional interest does not count toward the sixth sale, which triggers subdivision regulations.

**N. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2020-02 by amending the rule to address legislation enacted in 2014. The Department plans to submit its request for exception by January 1, 2023.

#### **R4-28-B1208. Public Report Correction**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

**B. Objective:** The objective of the rule is to provide for correction of errors in the public report filed with the Department.

#### **R4-28-B1209. Options; Blanket Encumbrances; Releases**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority includes A.R.S. §§ 32-2181, 32-2181.02, 32-2183, 32-2184, 32-2185, 32-2185.01, 32-2185.09, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, and 32-2197.09.

**B. Objective:** The objective of the rule is to establish the Department's position on developments where all or some lots are held under option, are subject to blanket encumbrance, or if conditions are imposed on the release of such encumbrances.

#### **R4-28-B1210. Earnest Money**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority is includes A.R.S. §§ 32-2181, 32-2181.03, 32-2183, 32-2185, 32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197.09, and 32-2197.10.

**B. Objective:** The objective of the rule is to set out conditions requiring a developer to deposit earnest money and down payments into a neutral depository.

#### **R4-28-B1211. Recordkeeping**

**A. Authorization:** General authority for the rule is found in A.R.S. § 32-2107(F). Specific statutory authority is includes A.R.S. §§ 32-2151.01-32-2181, 32-2181.03, 32-2183, 32-2185,

32-2185.01, 32-2185.06, 32-2195, 32-2195.03, 32-2195.04, 32-2195.10, 32-2197.02, 32-2197.04, 32-2197.05, 32-2197.06, 32-2197.08, 32-2197-09, and 32-2197.10.

**B. Objective:** The objective of the rule is to provide for recordkeeping in the event of sale or lease of property by a developer without a listing broker.

**Arizona Department of Real Estate**  
**A.A.C. Title 4, Chapter 28, Articles 4, 7, 8, & 12**

**ARTICLE 4. EDUCATION**

Section

- R4-28-401. Prelicensure Education Requirements; Waiver
- R4-28-402. Continuing Education Requirements; Waiver; Distance Learning
- R4-28-403. License Examinations
- R4-28-404. Real Estate School Requirements, Course and Instructor Approval
- R4-28-405. Expired

**ARTICLE 7. COMPENSATION**

Section

- R4-28-701. Commission Sharing Disclosure

**ARTICLE 8. DOCUMENTS**

Section

- R4-28-801. Repealed
- R4-28-802. Conveyance Documents
- R4-28-803. Contract Disclosures
- R4-28-804. Rescission of Contract
- R4-28-805. Public Report Receipt

**ARTICLE 12. DEVELOPMENTS**

Section

- R4-28-1201. Renumbered
- R4-28-1202. Repealed
- R4-28-1203. Renumbered
- R4-28-1204. Repealed

**PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION**

Section

- R4-28-A1201. Development Name; Lot Sales; Applicant
- R4-28-A1202. Development Map; Location; Land Characteristics
- R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions
- R4-28-A1204. Utilities
- R4-28-A1205. Water Supply
- R4-28-A1206. Sewage Disposal
- R4-28-A1207. Streets and Access
- R4-28-A1208. Flood Protection and Drainage Improvements
- R4-28-A1209. Common, Community, or Recreational Improvements
- R4-28-A1210. Master Planned Community
- R4-28-A1211. Assurances For Completion and Maintenance of Improvements
- R4-28-A1212. Schools and Services
- R4-28-A1213. Property Owners' Association
- R4-28-A1214. Development Use
- R4-28-A1215. Development Sales
- R4-28-A1216. Title Report and Encumbrances
- R4-28-A1217. ADEQ Approval
- R4-28-A1218. Registrations in Other Jurisdictions
- R4-28-A1219. Condominium Developments
- R4-28-A1220. Foreign Developments
- R4-28-A1221. Cemetery Developments
- R4-28-A1222. Membership Camping Developments
- R4-28-A1223. Affidavit

**PART B. GENERAL INFORMATION**

Section

- R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands
- R4-28-B1202. Conditional Sales Exemption
- R4-28-B1203. Material Change; Public Report Amendments
- R4-28-B1204. Cemetery Notice; Amendments

R4-28-B1205. Contiguous Parcels  
R4-28-B1206. Filing with HUD  
R4-28-B1207. Subsequent Owner  
R4-28-B1208. Public Report Correction  
R4-28-B1209. Options; Blanket Encumbrances; Releases  
R4-28-B1210. Earnest Money  
R4-28-B1211. Recordkeeping

#### ARTICLE 4. EDUCATION

##### **R4-28-401. Prelicensure Education Requirements; Waiver**

- A. Any individual applying for a real estate license shall either:
1. Complete the required 90-hour prelicensure education as prescribed in A.R.S. § 32-2124; or
  2. Except for the 27-hour Arizona-specific course, apply for and be granted a waiver of the prelicensure courses.
- B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes or demonstrates:
1. The name, mailing, and business address, daytime telephone number, and signature of the applicant;
  2. The type of license sought;
  3. The name and address of the school;
  4. The course description or curriculum, including credit hours; and
  5. Completion of one or more real estate courses. Acceptable evidence includes:
    - a. A signed letter from a school representative or official transcript from a college or university, which indicates:
      - i. The starting and ending dates of the course;
      - ii. The number of semesters, quarters, and credit hours awarded per course; and
      - iii. Whether the course examination was passed.
    - b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.
- C. If the waiver request is based on experience, or education and experience, the applicant shall submit a letter to the Commissioner that includes:
1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and
  2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and
  3. One or more of the following:
    - a. Completion of one or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:
      - i. The starting and ending dates of the course;
      - ii. The number of semesters, or quarters, and credit hours awarded per course;
      - iii. Whether the course examination was satisfactorily passed.
    - b. Evidence of more than five years' experience in a real estate related field; or
    - c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.
- D. The Department shall provide a copy of the prelicensure course content to any person requesting it.
- E. A person shall not receive credit for more than 10 hours of prelicensure education classes per day.

##### **Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsections (F) and (G) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-10 renumbered without change as Section R4-28-401 (Supp. 87-1). Amended by adding a new subsection (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Amended subsection (G) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-401 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

##### **R4-28-402. Continuing Education Requirements; Waiver; Distance Learning**

- A. Continuing education requirements.
1. To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
  2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
  3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
  4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124(L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.

5. The categories for real estate continuing education courses are:
  - a. Agency law. The majority of class material concerns agency relationships and disclosure.
  - b. Contract law. The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
    - i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
    - ii. Contract writing;
    - iii. Required disclosures, problem-solving, and law and rule requirements;
    - iv. Recent court decisions and case law studies;
    - v. Breach of contract issues;
    - vi. Legal, ethical and agency considerations, procedures, and disclosures;
    - vii. Accommodating current financing procedures, requirements, and options.
  - c. Commissioner's standards. The majority of class material relates to license laws, including:
    - i. Article 26 of the Arizona Constitution;
    - ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.
    - iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.
  - d. Real estate legal issues. The majority of class material concerns existing real estate law, including:
    - i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;
    - ii. Land and its elements (air, mineral rights, real and personal property);
    - iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;
    - iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;
    - v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;
    - vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;
    - vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;
    - viii. Commission issues and forms of business ownership;
    - ix. Homeowners Association regulations;
    - x. Real Estate Settlement Procedures Act (RESPA); and
    - xi. Environmental issues.
  - e. Fair housing. The majority of class material concerns equal opportunities in housing, including:
    - i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;
    - ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;
    - iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;
    - iv. Commercial and residential concerns; and
    - v. Administrative procedures and business practices.
  - f. Disclosure. The majority of class material concerns the following:
    - i. Licensee's disclosure obligations to client and others;
    - ii. Seller's and buyer's disclosure obligations to each other;
    - iii. Common material facts warranting disclosure, and liability for failure to disclose;
    - iv. Avoiding inadvertent non-disclosures;
    - v. Transaction documents that should be reviewed;
    - vi. Common "red flags" in a real estate transaction;
    - vii. Homeowner associations and buyers' obligations to homeowner associations; and
    - viii. Advising buyers and sellers of common "red flags."
  - g. Business brokerage. The majority of class material concerns business brokerage including:
    - i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
    - ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
    - iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
    - iv. Accounting for business brokers;
    - v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
    - vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."
  - h. General real estate. The majority of class material concerns real estate, but does not fall within any of the categories listed in subsections (A)(5)(a) through (A)(5)(g), including:
    - i. Appraisal methodology;
    - ii. General finance, use of financial calculators, mathematics, and managing cash flow;
    - iii. History of development in metropolitan areas; and
    - iv. Introduction to property management.
6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.

7. The Department may grant continuing education credit for a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.
  8. An applicant may substitute subject matter hours within a 90-hour broker's prelicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, for the continuing education credit required in subsection (A)(2) or (3).
  9. If any change in the continuing education course requirements occurs during a renewal applicant's license period and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.
- B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver or additional time.
1. Good cause may include:
    - a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;
    - b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;
    - c. The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice;
    - d. An approved real estate instructor requests a waiver for a course the instructor has taught;
    - e. The salesperson or broker demonstrates other extraordinary circumstances.
  2. A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours by the deadline or be subject to disciplinary action.
- C. The Department shall not grant a person credit for more than nine hours of continuing education per day.
- D. Distance learning.
1. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.
  2. The Department shall not approve a distance learning course unless it contains:
    - a. Individual modules of instruction for delivery on a computer or other interactive program;
    - b. At least one learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;
    - c. A structured learning method to enable the student to attain each learning objective;
    - d. A diagnostic assessment of the student's performance during each module of instruction;
      - i. The assessment shall measure what the student learned throughout the module of instruction, and
      - ii. Assess the comprehension of each concept covered in the module;
    - e. Remediation.
      - i. Repetition of a module if a student is deficient in a diagnostic assessment; and
      - ii. Continuous repetition of the module until the student understands the content material.
  3. An approved instructor shall teach and an approved instructor or the school director shall grade distance learning courses. The instructor or school director shall:
    - a. Provide the student with assistance, if required;
    - b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and
    - c. Certify the student as completing a distance learning course only if the student:
      - i. Completes all required instructional modules,
      - ii. Attends any required hours of live instruction or testing, or both, for a given course; and
      - iii. Passes a final examination.
  4. As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how the school will deal with hardware and software failure.

#### **Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (F) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-11 renumbered without change as Section R4-28-402 (Supp. 87-1). Amended by deleting subsections (C) and (E) and renumbering accordingly effective March 7, 1988 (Supp. 88-1). Former Section R4-28-402 renumbered to Section R4-28-403, new Section R4-28-402 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

#### **R4-28-403. License Examinations**

- A. The Department shall hold, or contract for, at least one state licensing examination each week.
- B. A state license examination shall not be returned to the applicant. The applicant shall be notified in person of the results of the examination by the words "passed" or "did not pass." The results notification for an applicant who did not pass the examination shall also show the score for the examination and the relative score for each content area.
- C. Qualifying to take or passing a license examination does not constitute a waiver of the Commissioner's right to deny issuance of a license if grounds exist pursuant to A.R.S. § 32-2153 or any other applicable statute.

#### **Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-12 repealed, new Section R4-28-12 adopted effective August 28, 1986 (Supp. 86-4). Former Section R4-28-12 renumbered without change as Section R4-28-403 (Supp. 87-1). Amended effective February 28,

**R4-28-404. Real Estate School Requirements, Course and Instructor Approval**

- A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:
1. The name, address, telephone number, and fax number, if any, of the school;
  2. The name of the owner and d.b.a. name, if any;
  3. Whether the owner is a sole proprietorship, partnership, trust, limited liability company, or corporation;
  4. The name, address, telephone number, and percentage ownership of each person, entity, or beneficiary holding or controlling 10% or more financial interest in the school;
  5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates or prelicensure verifications, or both;
  6. The name, business address, and telephone number of all current and prospective administrators, directors, and instructors;
  7. In addition to the information required in R4-28-301(A), each school owner, administrator, director, and instructor shall provide a statement of the individual's:
    - a. Education,
    - b. Teaching experience, and
    - c. Employment history.
  8. If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf;
  9. If the owner is a corporation or limited liability company, a copy of:
    - a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;
    - b. A current Certificate of Good Standing from the Arizona Corporation Commission;
    - c. The latest annual report on file with the Arizona Corporation Commission;
    - d. The Articles of Incorporation or Organization, as amended.
  10. The location of school registration and licensing certification records.
- B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:
1. The school name, address, telephone number, and fax number, if any;
  2. The authorized representative's name, title, and signature;
  3. The title of the course;
  4. A detailed outline of course material content that clearly lists the subject matter to be covered;
  5. The date, time, and location of the anticipated presentation, if known;
  6. The number of credit hours requested. The time allocated by a school for examination shall not be included in calculating credit hours if the examination is used for overall evaluation.
  7. The category of approval requested;
  8. A definition of segments if the course is to be offered in part and in its entirety;
  9. If video or audio tapes will be used as instructional aids, the percentage of the class they will comprise;
  10. The name of every instructor who will teach the course; and
  11. The date of the application.
- C. Instructor approval. Any person wishing to teach an approved real estate course shall apply for an instructors approval, and shall have at least one of the following in the proposed subject area:
1. A bachelor's or master's degree in an area traditionally associated with real estate, such as business, law, economics, marketing, and finance;
  2. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of the Appraisal Institute, and two years of postsecondary education from an accredited institution;
  3. Experience in real estate, and a bachelor's degree in education with a valid certificate issued within 15 years of the date of application for instructor approval;
  4. A real estate salesperson's or broker's license, and is an employee or former employee of a regulatory agency;
  5. A Distinguished Real Estate Instructor designation, with credentials in the specific subject;
  6. At least three years real estate or specific subject experience; or
  7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor.
- D. The school shall maintain a record for five years of each student attending the school. The record shall include:
1. The name of each student;
  2. The dates of attendance;
  3. The title of each course taken;
  4. The course number, category, and credit hours awarded;
  5. The final grade or score in each prelicensure course; and
  6. The original signature roster for each course or course segment taught.
- E. The prospective student shall sign an agreement or application to enroll, presented to the student by the school representative, that includes the following, in bold type and capital letters:
1. The course or course segment title within a curriculum,
  2. The total credit hours applicable for licensure or renewal,

3. The cost of each course,
  4. A statement of the refund policy, and
  5. A statement of any job placement service.
- F. The Department does not consider lists of employers given to graduates to be a placement service. The school may advertise job placement services only if:
1. Student referrals result from direct contact between the school placement service and prospective employers,
  2. Documented evidence of student referrals is maintained and includes:
    - a. The number of referrals to prospective employers per student,
    - b. Results of referrals,
    - c. Final placement or other disposition.
- G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the classes of any school, owner, administrator, director, or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.
- H. Change in school, course, or instructor. Each school owner, operator, director, and instructor shall:
1. Provide a written notice and supporting documentation within 10 days of any:
    - a. Change of personal name or address,
    - b. Change of business address,
    - c. Change of business mailing address,
    - d. School closing, or
    - e. Disclosure of certification information pursuant to R4-28-301(A),
  2. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:
    - a. Director, officer, or person holding or controlling 10% or more of the shares, if a corporation;
    - b. Partner, if a partnership;
    - c. Member or manager, if a limited liability company.
  3. Obtain approval from the Commissioner before conducting business when:
    - a. Changing a business name,
    - b. Establishing a school location,
    - c. Changing the course content,
    - d. Changing the course length, or
    - e. Offering a new course.
  4. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.

**Historical Note**

Section R4-28-404 renumbered from R4-28-403 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-405. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).  
Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective February 28, 2015 (Supp. 15-2).

**ARTICLE 7. COMPENSATION**

**R4-28-701. Compensation Sharing Disclosure**

A real estate broker shall disclose to all the parties in a transaction, in writing before closing, the name of each employing broker who represents a party to the transaction and who will receive compensation from the transaction.

**Historical Note**

Former Section R4-28-18 repealed, new Section R4-28-18 adopted effective May 1, 1980 (Supp. 80-3). Amended by adding subsection (B) effective March 13, 1981 (Supp. 81-2). Former Section R4-28-18 renumbered without change as Section R4-28-701 (Supp. 87-1). Section R4-28-701 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

**ARTICLE 8. DOCUMENTS**

**R4-28-801. Repealed**

**Historical Note**

Former Section R4-28-19 repealed, new Section R4-28-19 adopted effective May 1, 1980 (Supp. 80-3). Amended effective August 28, 1986 (Supp. 86-4). Former Section R4-28-19 renumbered without change as Section R4-28-801 (Supp. 87-1). Amended subsection (A) effective November 27, 1987 (Supp. 87-4). Correction to subsection (D), from "...management shall..." to "...management agreement shall..." as certified effective August 28, 1986. Amended subsections (A), (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective February 28, 1995 (Supp. 95-1). Former Section R4-28-801 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-802. Conveyance Documents**

- A. Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.
- B. During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property. Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property. The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.
- C. Transaction statements. In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction.

#### **Historical Note**

Former Section R4-28-20 repealed, new Section R4-28-20 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-20 renumbered without change as Section R4-28-802 (Supp. 87-1). Amended effective February 28, 1995 (Supp. 95-1). Section R4-28-802 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 3640, effective August 6, 2002 (Supp. 02-3).

#### **R4-28-803. Contract Disclosures**

- A. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:  
**THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT.**
- B. A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development conspicuously discloses the nature of the document at or near the top of the document.
- C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.
- D. Any agreement or contract for the sale or lease of a property interest in a development where a down payment, earnest money deposit, or other advanced money, if any, is paid directly to the seller and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.  
Prospective purchasers are advised that earnest money deposits, down payments, and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract.

#### **Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Amended Exhibit effective March 13, 1981 (Supp. 81-2). Former Section R4-28-21 renumbered without change as Section R4-28-803 (Supp. 87-1). Section R4-28-803 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

#### **R4-28-804. Rescission of Contract**

- A. Any agreement or contract for the purchase or lease of an unimproved subdivided lot, or any unsubdivided land, shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:  
The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.
- B. Any agreement or contract for the purchase or lease of a time-share interval shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:  
The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement.
- C. An opportunity to exercise the seven-day right of rescission shall be provided by conspicuously disclosing the complete current name, address, and telephone number of the seller on the face of all agreements and contracts.

#### **Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-22 renumbered without change as Section R4-28-804 (Supp. 87-1). Section R4-28-804 amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

#### **R4-28-805. Public Report Receipt**

When a public report is required, the developer shall complete the following public report receipt and obtain the purchaser's signature to verify that the prospective purchaser has received a copy of the public report:

#### **PUBLIC REPORT RECEIPT**

The developer shall furnish you, as a prospective customer, with a copy of the public report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.  
FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

\_\_\_\_\_  
Public Report Registration No. Development Name and Lot No.

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate, but is for information only.

\_\_\_\_\_  
Buyer's Name Address

\_\_\_\_\_  
Date

**Historical Note**

New Section R4-28-805 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**ARTICLE 12. DEVELOPMENTS**

**R4-28-1201. Renumbered**

**Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Amended subsection (B) effective June 9, 1982 (Supp. 82-3). Former Section R4-28-29 renumbered without change as Section R4-28-1201 (Supp. 87-1). Former Section R4-28-1201 renumbered to R4-28-B1205 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-1202. Repealed**

**Historical Note**

Former Section R4-28-30 repealed effective May 1, 1980, new Section R4-28-30 adopted effective May 1, 1980 (Supp. 80-3). Amended effective March 13, 1981 (Supp. 81-2). Former Section R4-28-30 renumbered without change as Section R4-28-1202 (Supp. 87-1). Repealed effective February 28, 1995 (Supp. 95-1).

**R4-28-1203. Renumbered**

**Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-31 renumbered without change as Section R4-28-1203 (Supp. 87-1). Former Section R4-28-1203 renumbered to R4-28-B1203 by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-1204. Repealed**

**Historical Note**

Adopted effective May 1, 1980 (Supp. 80-3). Former Section R4-28-32 renumbered without change as Section R4-28-1204 (Supp. 87-1). Section R4-28-1204 repealed by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION**

**R4-28-A1201. Development Name; Lot Sales; Applicant**

- A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:
  - 1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;
  - 2. The list of the lots to be offered, including the description of the sales offering;
  - 3. The name, address, telephone number, and fax number, if any, of the applicant; and
  - 4. The applicable information in this Article, Parts A and B.
- B. If the applicant is a corporation, the application shall contain the following information:
  - 1. A Certificate of Good Standing from the Arizona Corporation Commission, dated no earlier than one year from the date of the application;
  - 2. A corporate resolution, authorizing the person signing the application on behalf of the corporation; and
  - 3. The name and address of each officer, director, and shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial, or membership interest in the entity.
- C. If the applicant is a partnership, the application shall contain the following information:
  - 1. A copy of all partnership agreements;
  - 2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;
  - 3. If the general partner is a corporation, the information requested in subsection (B);
  - 4. If the general partner is a limited liability company, the information requested in subsection (D); and
  - 5. The name and address of each partner in the partnership.

- D. If the applicant is a limited liability company, the application shall contain the following information:
1. A copy of the Articles of Organization, stamped "Received and Filed" by the Arizona Corporation Commission. If more than one year has elapsed between the original filing with the Arizona Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Arizona Corporation Commission is required;
  2. A copy of the operating agreement and any amendments;
  3. If not included in the operating agreement or Articles of Organization, a copy of the company resolution signed by all members stating whether management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act on behalf of the company and sign the application;
  4. The name and address of each member, manager, and managerial employee, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
  5. If a member is a corporation, the information requested in subsection (B);
  6. If a member is a partnership, the information requested in subsection (C).
- E. If the applicant is a trust, the application shall contain the name and address of each trustee, beneficiary, and anyone in control of the trust.
- F. If the applicant is a subsidiary corporation, the application shall contain the name and address of the parent corporation.

#### **Historical Note**

Section R4-28-A1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1202. Development Map; Location; Land Characteristics**

- A. The applicant shall submit a legible copy, no larger than 11" x 17", of the recorded development map showing, as applicable:
1. The county recorder's recording information, including the book and page of maps and recording date;
  2. County or city approval;
  3. Applicable dedications;
  4. Monuments, distances, and bearings; and
  5. Registered land surveyor certification.
- B. The applicant shall identify the location of the development, including the street, city, county, and state, and:
1. The miles and direction from the nearest city or town, if applicable; and
  2. The most direct route for getting to the development from a federal, state, county, or city road.
- C. The application shall include a description of the physical characteristics of the land and any unusual factors that may affect it, such as if it has level or hilly terrain, rocky, loose, or alkaline soil, and
1. The gross acreage of the development;
  2. The total number of lots within the development, including a description of phasing, if applicable; and
  3. Whether and how lots are permanently or temporarily staked or marked for easy location.

#### **Historical Note**

Section R4-28-A1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions**

The applicant shall state, or include as applicable:

1. Whether the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city, and county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of any flood plain and its location, the effect of a 100 year frequency storm, and whether flood insurance is required.
2. Whether the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the effects of the condition, remedies, and a buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads, and canals, including:
  - a. Any unusual safety factors within or near the development, and
  - b. A description of all current and proposed adjacent land uses.
4. Whether the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage;
6. Whether the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety, or welfare; or
7. Whether the development lots are located within the boundary of a federal, designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

#### **Historical Note**

Section R4-28-A1203 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1204. Utilities**

The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:

1. The names, addresses, and telephone numbers of the electrical, telephone, and natural gas company that will provide service;
2. The location of existing electrical, telephone, and natural gas utilities in relation to the development;
3. The name of each person responsible for extending each utility to the lot lines;
4. The estimated completion date for extending each utility to the lot lines;
5. If the developer will only install conduit, a description of the arrangement made to complete operational utilities to lot lines;
6. The estimated cost a lot purchaser will be required to pay for completion of each utility to the purchaser's lot line, and, if the offer is for unimproved lots, the estimated costs to provide service from the lot line to the dwelling;
7. Upon completion of the utilities, other costs or requirements that must be addressed before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and fees for pulling wire through conduit;

8. If propane gas will be used, a letter from the supplier stating that it will be providing service to the development, with a description of requirements to be met and costs to be paid by the lot purchaser for receiving the service; and
9. If street lights will be available, the person responsible for completion, the estimated completion date and the person who will pay for the electricity.

**Historical Note**

Section R4-28-A1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1205. Water Supply**

An applicant shall include information about any water supply to the development, including:

1. The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the water lines closest to the development;
5. The name of the person responsible for extending the water lines to the lot lines;
6. The estimated completion date for extending the water lines to the lot lines;
7. The estimated cost a lot purchaser will be required to pay for completion of the water lines to the purchaser's lot line;
8. The estimated cost a lot purchaser will pay for completion of water lines from the lot line to a dwelling;
9. Other costs or requirements before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from a private well, whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the water provider if domestic water will be transported or hauled by the lot purchaser. A cost estimate computed on a monthly basis for a four-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area;
16. A water availability report from ADWR if the development is unsubdivided land. A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

**Historical Note**

Section R4-28-A1205 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

**R4-28-A1206. Sewage Disposal**

The applicant shall include information about sewage disposal for the development, including:

1. Whether the sewage disposal will be provided by a municipality, improvement district, public utility, private company, or individual sewage disposal system;
2. The name, address, and telephone number of the sewage disposal company;
3. The compliance status of the sewage disposal provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The name of the person responsible for extending the sewage disposal utility to the lot lines;
5. The estimated completion date for extending the utility to the lot lines;
6. The estimated cost the lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
7. If offering an unimproved lot, the estimated cost a lot purchaser will pay for completion of the utility from the lot line to the dwelling;
8. Upon completion of the utility, other costs or requirements that must be addressed before the lot purchaser receives service, including the service charge, hookup fees, tap-in fees, and development fees;
9. The name of the person responsible for maintenance of the sewage disposal utility within the development, other than from lot line to dwelling;
10. The name of the person who is or will be responsible for maintenance of the sewage disposal utility outside the development;
11. What cost, if any, will the lot purchaser pay toward maintenance of the sewage disposal utility;
12. If a sewage disposal provider is a for-profit public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued, and if not, an explanation of why a Certificate has not been issued;
13. A description of the type of individual sewage disposal system the lot purchaser will be required to install in accordance with the standards and requirements of ADEQ or its designee;
14. A description of all requirements and costs involved to install an operational individual sewage disposal system, including any cost for governmental licensing and permitting, equipment, and other installation, maintenance, and operation costs;
15. If an operational individual sewage disposal system cannot be installed, will the lot purchaser be offered a refund of the purchase price, and if so, an explanation of any condition or restriction involving the refund; and
16. If a dry sewer system will be installed for future connection to a future provider, the name of the future provider, all requirements and costs for lot purchasers, and the estimated connection date.

#### Historical Note

Section R4-28-A1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:

1. Exterior streets providing access are private; or federal, state, and county highways; or municipal streets;
2. The interior streets are public or private; and
  - a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;
  - b. Whether the streets are completed;
  - c. The standards to which the streets will be or are constructed;
  - d. If the streets are not completed, the person responsible for completion and the estimated completion date;
  - e. The type of existing and proposed surfacing;
  - f. The cost, if any, the lot purchaser will pay toward street completion;
  - g. The name of the person responsible for exterior and interior street maintenance;
  - h. Whether a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance; and
  - i. The cost, if any, the lot purchaser will pay toward street maintenance.

B. The applicant shall demonstrate that there is permanent access to the land over terrain that may be traversed by conventional 2-wheel drive automobiles and emergency vehicles by providing any of the following information or documents necessary to make the demonstration:

1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:
  - a. Describe the legal access by listing all recorded instruments which establish legal access,
  - b. Be accompanied by a map on which legal access is shown with accurate references to the recorded instruments,
  - c. Be accompanied by a legible copy of each recorded instrument listed in the statement.
2. A statement bearing the seal and signature of a registered land surveyor or professional engineer, affirming that legal access to and within the development, as described in the title insurance company legal access statement, is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:
  - a. The legal access corresponds with the actual physical access to the development and to the lots,
  - b. The legal access is permanent and describe how that permanence is assured.
3. The recorded subdivision map which shows approval by the applicable city or county officials.
4. Recorded easements or road dedications whether public or private. If private, the applicant shall ensure that development lot owners, emergency vehicles, and utility service providers have access rights.
5. Land, on which easements and roads are provided, is traversable by conventional 2-wheel drive automobiles and emergency vehicles.
6. Road maintenance programs that assure permanent access. Road maintenance programs include those administered by city or county governments, city or county improvement districts, or private property owner associations.
7. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

#### Historical Note

Section R4-28-A1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### R4-28-A1208. Flood Protection and Drainage Improvements

The applicant shall include with the application the following information about flood protection and drainage improvement:

1. A description of any current or proposed improvement;
2. The name of the person responsible for completion of the improvement;
3. The estimated completion date of the improvement;
4. The cost, if any, the lot purchaser will pay for completion of the improvement;
5. The name of the person responsible for the continuing maintenance and expense of the improvement;
6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance; and
7. The cost, if any, the lot purchaser will pay toward completion and maintenance of the improvement.

#### Historical Note

Section R4-28-A1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### R4-28-A1209. Common, Community, or Recreational Improvements

The applicant shall provide with the application a list of all common, community, or recreational improvements, located within the development, and include the following information:

1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

#### Historical Note

Section R4-28-A1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### R4-28-A1210. Master Planned Community

The applicant shall include the following information about a master planned community:

1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;

3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement; and
5. The cost, if any, the lot purchaser will pay toward the completion and maintenance of each improvement.

**Historical Note**

Section R4-28-A1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1211. Assurances for Completion and Maintenance of Improvements**

- A. The applicant shall identify:
1. Whether arrangements have been made to assure the completion, delivery, and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210; and
  2. Whether the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;
- B. An applicant shall provide one or more of the following assurances for completion:
1. A surety or completion bond from an insurance company licensed in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:
    - a. Be stipulated by and payable to a third party who is not the developer;
    - b. Be accepted and signed by all parties;
    - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
    - d. State when and how the third party may draw on the funds;
    - e. Be in an amount 10% greater than the estimated amount to complete all improvements; and
    - f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.
  2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:
    - a. Be stipulated by and payable to a third party who is not the developer;
    - b. Be accepted and signed by all parties;
    - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
    - d. State when and how the third party may draw on the funds;
    - e. Be in an amount 10% greater than the estimated amount to complete all improvements;
    - f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
    - g. State that repayment is the responsibility of the developer and not of the third party; and
    - h. State that the irrevocable letter of credit is noncancelable.
  3. A loan commitment and agreement from a lender licensed in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:
    - a. Be stipulated by and payable to a third party who is not the developer;
    - b. Be accepted and signed by all parties;
    - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date;
    - d. State when and how the third party may draw on the funds;
    - e. Be in an amount 10% greater than the estimated amount to complete all improvements;
    - f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
    - g. State that repayment is the responsibility of the developer and not of the third party even if the third party draws on the funds.
  4. A trust or escrow account with a financial institution or escrow company licensed in Arizona. The trust or escrow account shall specify which improvements are included and shall:
    - a. Be stipulated by and payable to a third party who is not the developer;
    - b. Be accepted and signed by all parties;
    - c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date;
    - d. State when and how the third party may draw on the funds;
    - e. Be in an amount 10% greater than the estimated amount to complete all improvements;
    - f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
    - g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.
  5. City and county trust agreement. A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed:
    - a. The trustee is an escrow company licensed in Arizona, and
    - b. The agreement is recorded.
  6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and prohibit close of escrow until all improvements are complete. The agreement shall contain the following stipulations:
    - a. The funds are not released nor the purchaser's deed or other relevant documents recorded until the developer's architect or engineer certifies to the Department and the escrow agent that the project is complete, ready for occupancy, and in compliance with all city and county requirements;
    - b. If the completion date is not met:
      - i. The developer will give purchasers notice that completion dates were not met and an updated completion schedule,
      - ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent,
      - iii. The public report is invalid and all sales are suspended; and
      - iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.

7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.
    - a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.
    - b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.
    - c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.
    - d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
    - e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.
    - f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
  8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).
- C. If the construction of any improvement is completed in phases, the applicant shall provide a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.

**Historical Note**

Section R4-28-A1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

**R4-28-A1212. Schools and Services**

- A. The applicant shall include the following information about schools:
1. The location of and distance to the nearest public elementary, junior, and high schools and whether school bus or other transportation is available;
  2. The type and location of any other school located within a 1/2 mile radius of the exterior boundaries of the development.
- B. The applicant shall include the following information about services:
1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink, and medical supplies may be purchased;
  2. Public transportation. The type, provider, location, and distance to the nearest access point to public transportation for the development;
  3. Medical facility. The type, provider, location, and distance to the nearest medical facility;
  4. Fire protection. Whether fire protection is available to the development, the name of the provider and the cost to the lot purchaser;
  5. Ambulance service. Whether ambulance service is available to the development and whether the development is in a 911 service area. If 911 service is not available, the name, address, and telephone number of the ambulance service.
  6. Police service. Whether police service is available to the development, and the name of the provider;
  7. Refuse collection. Whether provisions have been made for refuse collection, the name of the service provider, and the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

**Historical Note**

Section R4-28-A1212 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1213. Property Owners' Association**

The applicant shall provide the following information about a property owner's association:

1. The name of the association, if any;
2. The name of the master property owners' association, if any;
3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;
4. Whether the association is legally formed and operational;
5. When and under what conditions control of the association will be released to lot purchasers;
6. When and under what conditions title to the common areas will be transferred to the association;
7. Whether the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default;
8. Whether all lot owners will be required to be members of the association. If not, explain;
9. Whether nonmembers will be liable for payments to the association; and
10. A copy of the Articles of Incorporation and Bylaws in effect.

**Historical Note**

Section R4-28-A1213 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1214. Development Use**

The applicant shall provide the following information about development use:

1. Whether unimproved (vacant) lots or improved (with building) lots will be sold or leased;
2. The use for which development lots will be offered and an identification of the lots and their proposed use if more than one use is contemplated;
3. Whether the development or any lot is subject to adult occupancy or age restrictions;
  - a. If yes, explain the restriction;
  - b. If yes, explain whether this restriction is in compliance with the Federal Fair Housing Act.
4. Whether all or any portion of the development is located in an open range or area in which livestock may roam at large under the laws of this State and what provisions, if any, have been made for the fencing of the development to prevent livestock from roaming within the

development and on a purchaser's lot. If land is located in an open range or area in which livestock may roam at large, the purchase contract shall contain:

- a. Any provisions for the fencing of the development to prevent livestock from roaming within the development; and
  - b. Any fencing requirements for the buyers to prevent livestock from roaming on their property.
5. Whether mineral rights are, or will be, reserved from the development lots and what the effect will be on lot owners if the minerals are extracted from the development; and
  6. A full written disclosure of any condition or provision not specified in subsections (1) through (5) that may limit the use or occupancy of the property.

#### **Historical Note**

Section R4-28-A1214 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1215. Development Sales**

The applicant shall provide a description of the sales offering and:

1. A description of how sales or leases will be made and the manner by which title, right, or other interest is to be conveyed to the purchaser, including copies of sales and lease transaction documents;
2. Indicate whether cash sales are allowed and when the purchaser takes title;
3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be refunded;
5. Indicate when the lot purchaser will be permitted to use and occupy the lot;
6. An explanation if the purchaser will not receive title free and clear of all liens;
7. The estimated average sales price for the lots;
8. Indicate whether any of the property will be leased, and if so:
  - a. Provide a description of any provision for increase of rental payments during the term of the lease and any provisions in the lease prohibiting assignment or subletting, or both;
  - b. Indicate whether the lease prohibits the lessee from mortgaging or otherwise encumbering the leasehold; and
  - c. Indicate whether the lessee is permitted to remove an improvement when the lease expires.
9. The name, address, and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
11. Indicate whether the property has been or will be offered for sale before the date of the development application. If yes, explain; and
12. Indicate whether the sales documents contain all contract disclosures required by rule and statute.

#### **Historical Note**

Section R4-28-A1215 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 506, effective March 5, 2005 (Supp. 05-1).

#### **R4-28-A1216. Title Reports and Encumbrances**

The applicant shall provide the following information concerning title reports and encumbrances:

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:
  - a. An effective date not more than 30 days before Department receipt. The Department may request that the applicant update the title report so that it is not more than 30 days old when the public report is issued;
  - b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
  - c. The applicant's interest in the property;
  - d. The name and telephone number of the person who prepared the title report;
  - e. A requirement page, if applicable; and
  - f. The following statement after the title exceptions: "There are no further matters of record affecting the land."
3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens, encumbrances, trust agreements, options, and maps.

#### **Historical Note**

Section R4-28-A1216 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1217. ADEQ Approval**

The applicant shall obtain subdivision approval from ADEQ or its designee.

#### **Historical Note**

Section R4-28-A1217 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1218. Property Registrations in Other Jurisdictions**

The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

#### **Historical Note**

Section R4-28-A1218 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

#### **R4-28-A1219. Condominium Developments**

The applicant shall provide the following information about condominium developments:

1. A copy of the recorded condominium declaration, map, and amendments in effect, and

2. An opinion letter from an attorney licensed to practice in Arizona, stating that the condominium plat and declaration of condominium are in compliance with the requirements of A.R.S. §§ 33-1215 and 33-1219.

**Historical Note**

Section R4-28-A1219 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1220. Foreign Developments**

- A. Unless exempt pursuant to A.R.S. § 32-2181.02, an applicant shall ensure that any development located outside the state that is advertised, promoted, or sold within the state complies with all Arizona laws and rules as if the land was located in the state.
- B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.
- C. The applicant shall provide evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

**Historical Note**

Section R4-28-A1220 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1221. Cemetery Developments**

The applicant shall provide the following information about cemetery developments:

1. A statement that there are no liens on the cemetery property,
2. An accounting of the endowment care fund for an existing perpetual care cemetery, and
3. A financial statement of the applicant.

**Historical Note**

Section R4-28-A1221 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1222. Membership Camping Developments**

The applicant shall provide the following information about a membership camping development:

1. If the interest of the operator is evidenced by a lease, license, franchise, or a reciprocal agreement, a copy of the document and any amendments;
2. A description of any lakes or streams available for recreational use; and
3. A description of any exchange network and the responsibilities, obligations, and rights of the operator and purchaser, and copies of all exchange network documents.

**Historical Note**

Section R4-28-A1222 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-A1223. Affidavit**

The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

**Historical Note**

Section R4-28-A1223 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**PART B. GENERAL INFORMATION**

**R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands**

- A. A developer may use the expedited public report registration by preparing the public report and submitting the appropriate application documents and fees established in A.R.S. §§ 32-2183(B) or 32-2195.03(B) to the Department. The Department shall assign a registration number to each application and verify the following:
  1. The correct application form has been used and is two-hole punched at the top in standard placement. The application is placed on a two-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded, and placed in the expanding file. The application shall include:
    - a. The Expedited Registration Request letter signed by the applicant; and
    - b. The completed Department checklist for administrative completeness which indicates inclusion of the documents required by A.R.S. Title 32, Chapter 20, Article 4 and 4 A.A.C. 28, Article 12, Part A.
  2. The filing fees have been included with the application;
  3. All application questions have been answered;
  4. The application signature page has been properly executed;
  5. All required documents have been submitted; and
  6. A complete and accurate public report in the Department's published format on a computer diskette, formatted in a word processing program compatible with the Department's current computer operating system and word processing software, has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)
- B. The Department may allow the applicant to correct a deficiency within the administrative completeness time-frame provided in A.R.S. §§ 32-2183(B) and 32-2195.03(B), in which case the overall 15 business day limitation is suspended until the applicant corrects the deficiency.

**Historical Note**

Section R4-28-B1201 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1202. Conditional Sales Exemption**

- A. Any developer applying for a special order of exemption authorizing the offer for sale of a subdivision lot or unsubdivided land before issuance of a public report shall provide the following information to the Department:
  1. The completed and executed Petition for Conditional Sales Exemption;

2. The completed and executed subdivision or unsubdivided land application for a public report;
  3. The purchase contract containing all required contract disclosures and the Conditional Sales Addendum;
  4. A current title report showing the ownership interest of the developer and acceptable condition of title;
  5. A copy of the recorded development map, or if not recorded, a copy of the unrecorded map;
  6. A copy of the Condominium Declaration, if applicable;
  7. A Certificate of Assured Water Supply, or a letter from the ADWR or other evidence that the property is located in an area designated as having an assured water supply, if the property is located in a groundwater active management area;
  8. A water adequacy report from the ADWR or evidence that the property is located in an area designated as having an adequate water supply, if the property is located outside of a groundwater active management area; and
  9. Any other information revealed necessary after preliminary review.
- B. The conditional sales exemption shall expire upon issuance or denial of the public report, or upon issuance of an order to summarily suspend sales, to cease and desist, or a voluntary suspension of sales by the developer or owner.

**Historical Note**

Section R4-28-B1202 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1203. Material Change; Public Report Amendments**

- A. The developer shall notify the Department of all material changes in the information required by A.R.S. Title 32, Chapter 20, Articles 4, 7, 9, and 10, or 4 A.A.C. 28, Article 12, Part A.
- B. According to material changes reported in subsection (A), the Department may require the developer to amend the public report.
- C. Completion Date Extension.
1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.
  2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.
  3. If an extension is denied, the developer shall provide the Department with a written agreement to suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).
- D. To amend a public report, a developer shall submit payment of the applicable amendment fee and the following information:
1. The name and registration number of the development;
  2. The name and signature of the developer;
  3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
  4. Status of sales as prescribed in subsections (C) and (E); and
  5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.
- E. Suspension of sales.
1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.
  2. In lieu of issuing a suspension order under A.R.S. § 32-2157, the Department may accept a developer's written agreement to suspend sales until the amended public report has been issued by the Department.
- F. If the Department determines that a suspension of sales is not necessary for the protection of purchasers and approves the proposed disclosure of the change, sales may continue if the prospective purchaser is provided a copy of the current public report and disclosure of all changes before signing a contract. Completion of sales is conditioned upon the developer obtaining and delivering to each purchaser under contract the amended public report.
- G. Upon obtaining the amended report, the developer shall provide a copy to prospective purchasers in place of the earlier public report and obtain a receipt for the amended public report.
- H. If an application to amend a public report is denied, the Department shall notify the developer in writing of the statutory basis for the denial and of the developer's right to a fair hearing.

**Historical Note**

Section R4-28-B1203 renumbered from R4-28-1203 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

**R4-28-B1204. Cemetery Notice; Amendments**

A change to information required pursuant to the provisions of Title 32, Chapter 20, Article 6, R4-28-301(A), or any other Section, requires amendment of the notice filed pursuant to A.R.S. 32-2194.01.

**Historical Note**

Section R4-28-B1204 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1205. Contiguous Parcels**

Except for lots in a platted subdivision, if two or more contiguous parcels of land are acquired by a single owner, the Department shall classify the lots as a single parcel for purposes of subdivision laws.

**Historical Note**

Section R4-28-B1205 renumbered from R4-28-1201 and amended by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1206. Filing with HUD**

If the subdivider requests that a subdivision public report be certified by the Department for filing with HUD, the subdivider shall comply with the terms, conditions, and requirements of the HUD certification agreement.

**Historical Note**

Section R4-28-B1206 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1207. Subsequent Owner**

- A. Except as provided in A.R.S. § 32-2181.02, any developer who is a successor in interest to six or more lots within a subdivision on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any lot.
- B. Any developer who is a successor in interest to six or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.
- C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.
- D. The Department shall not issue a new public report to a subsequent owner of a development if the previous developer failed to complete proposed improvements in accordance with estimated completion dates specified in the previously issued public report until one of the following occurs:
  - 1. The subsequent owner makes financial arrangements, as described in R4-28-A1211, in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
  - 2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or
  - 3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or
  - 4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.
- E. A developer who is a new owner of property that is the subject of a pending application for a public report shall not replace or be substituted for the applicant of the pending application.

**Historical Note**

Section R4-28-B1207 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1886, effective May 2, 2000 (Supp. 00-2).

**R4-28-B1208. Public Report Correction**

If the public report contains an error, the Department shall correct the report at its own expense. Additional or changed information that was known to the developer before issuance of the report is not an error. The Department shall not correct the public report after it has been in effect for 10 days. After 10 days, the developer shall change the report through the development amendment process, established in R4-28-B1203, with payment of the applicable amendment fee.

**Historical Note**

Section R4-28-B1208 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1209. Options; Blanket Encumbrances; Releases**

- A. The Department shall not issue or amend a public report for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to release from the blanket encumbrance shows that the lot shall:
  - 1. Be acquired or released in a particular sequence,
  - 2. Be acquired or released only after one or more additional lots have been acquired or released, or
  - 3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance,
- B. The developer may require payment of a premium to permit the acquisition or release of the lot.
- C. When a blanket encumbrance clouds title to a development, the developer shall place a written statement from the holder of the blanket encumbrance in the public report application, quoting the provisions that enable a buyer to acquire title to a lot, free of the blanket encumbrance.

**Historical Note**

Section R4-28-B1209 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1210. Earnest Money**

The developer shall deposit earnest money and down payments in a neutral depository if:

- 1. The seller is in bankruptcy;
- 2. The sale is conditional pursuant to R4-28-B1202; or
- 3. The Department perceives a risk to the buyer.

**Historical Note**

Section R4-28-B1210 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**R4-28-B1211. Recordkeeping**

If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records as required by A.R.S. § 32-2151.01(A) and (C).

**Historical Note**

Section R4-28-B1211 adopted by final rulemaking at 5 A.A.R. 650, effective February 3, 1999 (Supp. 99-1).

**Arizona Department of Real Estate**  
**Arizona Revised Statutes Providing Rule Authority**  
**Five Year Rule Review**  
**A.A.C. Title 4, Chapter 28, Articles 4, 7, 8 and 12**

**32-2107. Powers and duties of commissioner; compensation; administration of department; seal; revolving fund**

- A. The commissioner shall have charge of the department with power to administer it in accordance with the provisions of and to carry out the purposes of this chapter. The commissioner shall adopt a seal which shall bear the words "real estate commissioner, state of Arizona", which shall be used for the authentication of proceedings of the department and the official documents thereof. The commissioner's principal office shall be at the state capitol. The commissioner may have branch offices the commissioner deems necessary in other cities.
- B. The commissioner shall receive compensation as determined pursuant to section 38-611.
- C. The commissioner shall prepare and cause to be produced and circulated among the licensees and the general public educational matter the commissioner deems helpful and proper for the guidance and assistance of both licensees and the public. The commissioner may assess a fee for each of these educational products that does not exceed a level reasonably estimated to be sufficient to recover production and distribution costs.
- D. In cooperation with industry educators, content experts and other professionals, the commissioner may develop, sponsor or hold educational seminars and workshops for the benefit of licensees.
- E. A real estate department education revolving fund is established consisting of monies received from the sale of educational matter under subsection C of this section and grants of monies to be used in the production of educational products. Monies in the fund shall be used for the printing of a compilation of real estate laws and rules and other educational publications and for other educational efforts the commissioner deems helpful and proper for the guidance and assistance of licensees and the public, including sponsoring and holding educational seminars or workshops for educators and other licensees. The department shall establish the revolving fund as a separate account. The department shall make a full accounting of its use to the department of administration annually or as required by the department of administration. Expenditures from the fund and reimbursement to the fund shall be as prescribed by rules of the department of administration. Monies received in the real estate department education revolving fund are not subject to reversion, except that all monies in the fund in excess of twenty-five thousand dollars at the end of the fiscal year revert to the state general fund.
- F. The commissioner shall adopt rules, in accord with this chapter, as the commissioner deems necessary to carry out this chapter.
- G. The commissioner may approve standardized legal forms for use in the sale or lease of real estate for the purpose of recognizing compliance of the forms with this chapter and the rules adopted pursuant to this chapter.

**32-2130. Renewal of licenses; education requirements; broker licensee renewal as salesperson licensee**

- A. A license may be renewed in a timely manner by filing an application for renewal in the manner prescribed by the commissioner, by paying the renewal fee specified in this chapter and by presenting evidence of attendance at a school certified by the commissioner during the preceding license period of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G, or a lesser number of credit hours prescribed by the commissioner, of real estate oriented continuing education courses prescribed and approved by the commissioner. The total number of credit hours shall be accrued at a rate

**Arizona Department of Real Estate**  
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of twenty-four credit hours for salespersons and associate brokers and thirty credit hours for designated brokers or for associate brokers employed by a designated broker pursuant to section 32-2151.01, subsection G during each twenty-four month period of licensure. The department shall maintain a current list of approved courses. The commissioner may waive all or a portion of the continuing education requirement for good cause shown. The commissioner shall determine by rule the content of the renewal credit hours. The renewal credit hours may include the commissioner's current topics, including short sales. For the purposes of this subsection, "short sales" means real estate transactions in which the sales price is insufficient to pay the loan encumbering the property in addition to the costs of sale and the seller is unable to pay the difference.

B. If an applicant is renewing a license within one year after it expired, the applicant may apply continuing education hours completed after the expiration toward the continuing education required for renewal.

C. Each renewal application shall contain, as applicable, the same information required in an original application pursuant to section 32-2123.

D. Cemetery brokers and salespersons and membership camping brokers and salespersons are exempt from the educational requirements of this section.

E. Nothing in this section requires a licensee to attend department produced or sponsored courses if approved courses are otherwise available.

F. Between the expiration date of the license and the date of renewal of the license, the rights of the licensee under the license expire. While the license is expired it is unlawful for a person to act or attempt or offer to act in a manner included in the definition of a real estate, cemetery or membership camping broker or salesperson. If the license of an employing broker expires under this subsection, the licenses of persons who are employed by the employing broker shall be severed from the employing broker on the license expiration date of the employing broker. These persons may be rehired on renewal of the employing broker's license. The department shall terminate a license that has been expired for more than one year.

G. Except as provided in section 32-4301, no more than one year after the license expiration date, the department shall renew a license without requiring the applicant to submit to an examination if the applicant held a license that was not canceled or suspended at the time of expiration. Except as provided in section 32-4301, the license period for a license renewed pursuant to this subsection commences the day after the expiration date of the expired license. Except as provided in section 32-2131, subsection A, paragraph 4 or 6, an applicant whose license has been terminated or revoked does not qualify for license renewal.

H. Any employee or immediate family member of any employee of this state who, pursuant to section 32-2110 or any other law, rule or requirement, is prohibited from using a license issued under this chapter shall have, on the request of the employee or family member, the license placed on inactive status, shall have the right to renew the license and shall not be required to pay further fees until the employee or family member is again eligible to use the license. Renewal fees for the license shall not be required for only as long as the employee or family member is prohibited from using the license.

I. The department shall not renew the license of a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction. This subsection does not limit the commissioner's authority and discretion to deny the renewal for any other reason pursuant to this chapter.

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J. A real estate broker licensee may renew as a real estate salesperson licensee without having to meet the requirements prescribed by section 32-2124, subsection B. If a person renews as a real estate salesperson pursuant to this subsection, the person shall pay the salesperson's renewal fee as prescribed in section 32-2132. If the person subsequently wants to obtain a real estate broker license, the person must meet the requirements of this chapter, including the requirements prescribed by section 32-2124, subsection C.

**32-2135. Real estate schools; courses of study; instructors; certification**

A. Except as provided in section 32-4301, before offering a course of study towards completion of the education requirement for real estate licensure or renewal of licensure, a school shall obtain from the commissioner a certificate of approval or renewal to operate a school for a period of at least four years. A school shall also obtain a certificate of course approval for each course offered for credit that is not currently approved for another school. Each school is responsible for the content of any course it offers and for the professional administration and teaching of the course. Live classroom prelicensure education courses, live classroom continuing education courses, online courses and distance learning continuing education courses are subject to approval pursuant to this section.

B. Each approved school shall issue a certificate of real estate course attendance to each person who completes an approved prelicensure or continuing education course. An applicant for renewal of licensure as provided by section 32-2130 shall file evidence of the certificates issued by the school with the commissioner showing the number of credit hours and course of study required for renewal.

C. The commissioner may withdraw or deny certification or approval of real estate schools, educational courses or real estate instructors for any acts inconsistent with the requirements of this chapter, including:

1. The commission of or the failure to report a violation by an approved school or instructor of any provision of this chapter or rules adopted pursuant to this chapter.
2. Improper certification of student attendance or performance.
3. Any act that is grounds for discipline under section 32-2153.
4. Teaching information or using course materials that have not been approved by the commissioner.
5. Failing to attend any continuing education course required by the commissioner.
6. Filing any false or misleading application, report or documentation with the department.
7. Teaching course content that is not current or that has substantially changed from the course as approved.

D. A real estate school, through any owner, director, administrator, instructor or other agent, shall not:

1. Offer a course of study for credit that is not approved by the department, except that the school may advertise a course as pending approval before its approval.
2. Promote or advertise the school using false or misleading statistics or testimonials or any other form of deceptive advertisement.

E. The commissioner may determine minimal content requirements for approving educational courses and appropriate professional qualifications for approving instructors to teach individual educational courses.

F. Except as provided in subsection G of this section, at least thirty days before holding a course of study for completion of the education requirements leading to licensure of real estate

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applicants or for license renewal requirements, an application for a certificate of course approval or renewal must be filed with the department. For a live classroom course, the application shall include a course outline with sufficient detail to clearly identify the scope and content of the course. The outline shall state a desired instructional outcome for the course. A prelicensure education course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Course approval shall not be unreasonably withheld and shall not be issued later than thirty days after filing with the department for a live classroom course. A continuing education distance learning course approval shall not be issued later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the course submission. A provisional approval may be withdrawn by the department upon fifteen days' advance notice if the department's review of the course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the course approval shall remain approved for the entire course approval period. Course approval shall be for a period of at least four years if the contents of the course remain current and substantially unchanged. The course may not be taught if the content ceases to be current or is substantially changed. The department may establish by rule additional appropriate requirements for approval of a distance learning course.

G. At least ninety days before holding an online course of study for completion of the education requirements leading to licensure of real estate applicants, an application for a certificate of online course approval must be filed with the department. An online course outline that is submitted for approval shall be divided into estimated fifty-minute instructional segments. Online course approval shall not be unreasonably withheld and shall be issued not later than ninety days after filing with the department. If the approvals under this subsection are not granted within the time frames prescribed by this subsection, the online course shall be automatically approved on a provisional basis for one hundred eighty days, unless the department has otherwise notified the applicant of specific deficiencies or unfulfilled requirements for the online course submission. A provisional approval may be withdrawn by the department on fifteen days' advance notice if the department's review of the online course subsequently reveals course deficiencies or unfulfilled course requirements. If not withdrawn, the online course approval shall remain approved for the entire online course approval period. Online course approval shall be for a period of at least four years if the contents of the online course remain current and substantially unchanged. The online course may not be taught if the content ceases to be current or is substantially changed. Approved online courses must provide for student participation, feedback and remedial instruction. The department may establish by rule additional appropriate requirements for approval of an online course.

H. For a currently approved course or online course:

1. The school shall submit notice to the department at least fourteen days before holding the course to permit department employees to monitor the course. The notice is not otherwise subject to review and approval by the department.
2. With the permission of the school that received original approval for the course, another school that desires to offer the course is subject only to the fourteen-day notice requirement before holding the same course. No additional review and approval by the department is required.

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I. The department shall approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held in this state.

J. The department may approve for continuing education credit any course of study proposed by a real estate school if the course satisfies the commissioner's requirements and is held outside this state. On the commissioner's request, the school shall either:

1. Provide the department with a videotape or videotapes of the course.

2. Make arrangements that are approved by the department for monitoring the course.

K. An instructor shall file with the department an application for instructor approval or renewal. Instructor approval shall be for at least four years from the date of approval and is subject to amendment during the license period only if information material to the instructor's qualifications has changed. A person holding instructor approval to teach specific subject matter is not subject to additional or duplicate approval requirements during the original approval period, except that an additional instructor competency area may be added during the license period on submission by the instructor of evidence of competency in such additional competency area.

L. Beginning January 1, 2012, in the twenty-four months before application, each instructor original or renewal applicant, other than a panelist, guest speaker, attorney or out-of-state instructor, shall attend at least a three-hour professional seminar or workshop, approved by the department, emphasizing instruction methods, techniques and skills. At the discretion of the commissioner this requirement may be waived based on individual request review.

M. The course filing time frames prescribed in this section may be waived by the department for good cause shown.

N. Unless subject to a violation or suspected violation listed in subsection C of this section, the department's approval of a school, school official, instructor or course shall be processed in a time frame consistent with the time frames set forth in this section.

O. This section does not affect the department's ability to withdraw or deny certification or approval of real estate schools, education courses or real estate instructors for a violation of this chapter.

**32-2151. Disposition of funds; trust money deposit requirements**

A. Unless otherwise provided in writing by all parties to a transaction, any licensed real estate broker who does not immediately place all funds entrusted to the broker, in the broker's capacity as a real estate broker, in a neutral escrow depository in this state shall upon receipt place all such funds in a trust fund account in a federally insured or guaranteed account in a depository located in this state. The commissioner may adopt such rules as are necessary to provide for records to be maintained and the manner in which such trust fund account deposits may be made.

B. The following minimum requirements apply to each broker's trust fund account:

1. The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.

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2. The broker shall retain a complete record of all monies received in connection with a real estate transaction in the main or branch office of the designated broker in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department. A broker's records shall be kept according to generally accepted accounting principles and shall include a properly descriptive receipts and disbursement journal and client ledger. The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months. A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding three thousand dollars to keep the account open or to avoid charges for an insufficient minimum balance.

C. An agreement to place monies entrusted to the broker in a depository that is located outside of this state is valid if all parties to the transaction agree in writing and either:

1. The monies are placed in a property management trust account established pursuant to section 32-2174 and:

(a) The account is federally insured or guaranteed.

(b) The property management agreement contains:

(i) Disclosure that the department's regulatory protections of the owner's monies may be significantly hampered.

(ii) Disclosure that the owner may not have access to or any control over the trust account, except to audit and review the status of the account.

(iii) An addendum that has the signed authorization by an appropriately empowered official of the depository in which the trust account is placed that the trust account and all related documentation will be open to examination by the department and the owner.

2. If the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside this state.

D. This section shall not be construed to allow a broker to commingle monies entrusted to the broker with the broker's own monies, unless the commissioner adopts rules that allow commingling.

**[32-2197.02. Notice of intent to sell; application for timeshare plan public report; authorization for pre-sales](#)**

A. Any person who sells, offers to sell or attempts to solicit prospective purchasers located in this state to purchase a timeshare interest or any person who creates a timeshare plan with an accommodation in this state, whether or not the plan is sold or offered for sale in this state, shall register a notice of intent to sell and application for a public report with the department.

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B. Except as otherwise provided in subsection C of this section, an application for a public report for a timeshare plan must contain the following documents and information:

1. The name and address of the owner and developer. If the holder of any ownership interest in the land is other than an individual, including a corporation, partnership, limited liability company, trust or other entity, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this paragraph, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. A comprehensive statement of the timeshare plan.
3. The legal description and location of the timeshare property being offered.
4. To the extent required by applicable local or state laws, a recorded map of the timeshare property showing book, page and date of recording or instrument number and date of recording, and if required by applicable local or state laws, approval by the county or city in which the timeshare property is located. A map, survey or location plan is required for incomplete timeshare properties. A timeshare property involving completed buildings where all purchasers are given an on-site tour prior to a financial commitment may not require a plat map. The need for a map, survey, location plan or building plan on such completed timeshare properties will be determined at the time of application.
5. A description of the total timeshare property in terms of the number of buildings, number of stories, number of units, common areas of the timeshare property or public use areas in any hotel, motel or other facility.
6. Proof of adequate financial arrangements and assurances for completion of any improvements included in the offering to be installed by the developer, the estimated schedule for completion of the improvements and provisions, if any, for the continued maintenance of the improvements.
7. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the timeshare property and the estimated schedule for their installation.
8. A statement of the provisions that have been made for permanent access, and provisions, if any, for health department approved sewage and solid waste collection and public utilities, including water.
9. A complete disclosure as to the operating costs of the timeshare plan, including all of the variable costs of operation, management and reserves and method of assessment, including evidence of financial arrangements which provide for the developer's guarantee of payment of assessment on unsold interests, or if the developer is not paying such costs, the effect such nonpayment will have on operating costs.
10. A statement that the developer must notify the commissioner if a timeshare plan accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same timeshare plan. The commissioner may require the developer to notify a

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prospective purchaser of any potential tax or lien that would materially and adversely affect the prospective purchaser.

11. A current preliminary title report for all accommodations comprising the timeshare property for which the application is being made.

12. The recorded declaration of dedication of the timeshare property or other timeshare instruments or contracts incorporating all covenants of the grantor or lessor and creating the timeshare interests and the provisions of the plan, if any, to include organization of an association.

13. A true statement as to the methods to be used in accordance with section 32-2197.12 to provide that the purchaser of a timeshare interest will not lose or have the purchaser's interest imperiled by the foreclosure of underlying liens, encumbrances or other obligations and that the developer can convey, or cause to be conveyed, the interest in the offering.

14. The terms and conditions as to how a purchaser's interest is to be conveyed including examples of all contracts, purchase agreements, deeds, fact sheets and other instruments to be used in marketing, financing and conveying timeshare interests.

15. A true statement as to title to personal property within the units or timeshare property incident to a purchaser's use and how purchasers will receive assured use of personal property during the term offered.

16. A statement of the provisions made for the management of the timeshare plan, including a copy of the management agreement, relationship with the developer and whether the management entity will be bonded or insured.

17. The name, street address, mailing address and telephone number of:

(a) The designated broker, if any, used by the developer.

(b) A managing entity of the timeshare plan.

18. Copies of all contracts and promotional material pertaining to any exchange program included in the offering.

19. If the timeshare property or timeshare plan being registered is located within the United States, but outside this state, each filing must include evidence that the timeshare property or timeshare plan is qualified for sale in the home state where the timeshare property or timeshare plan is located according to the standards or requirements for the sale of timeshare interests existing in the home state at the time of the filing.

20. If the timeshare property or timeshare plan being registered is located outside the United States, each filing of a foreign timeshare property or timeshare plan must include evidence establishing that all requirements of the country where the timeshare property or timeshare plan is located have been met for the sale of timeshare interests or the local equivalent of timeshare interests in the home country at the time of the filing.

21. A public report that complies with the requirements of section 32-2197.08.

22. Such other information and such other documents and certificates as the commissioner may reasonably require.

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C. At the developer's request the commissioner may authorize the developer to conduct pre-sales of the timeshare plan before the issuance of a public report if the application for a public report is administratively complete, as determined by the commissioner or as established by rule. The authorization for pre-sales allows the developer to begin offering and selling timeshare interests while the application for the timeshare public report is in process. To obtain an authorization to conduct pre-sales, the developer shall do all of the following:

1. Submit a formal written request to the commissioner for an authorization to conduct pre-sales.
2. Submit an administratively complete application for a timeshare public report to the commissioner, including all appropriate fees and exhibits required under subsection B of this section.
3. Provide evidence acceptable to the commissioner that all monies received by the developer will be placed in an independent escrow account with instructions that monies will not be released until a timeshare public report has been granted.
4. Give each purchaser and prospective purchaser a copy of the proposed timeshare public report that the developer has submitted to the department with the initial application.
5. Give each purchaser the opportunity to cancel the purchase agreement in accordance with section 32-2197.03. The purchaser shall have an additional opportunity to cancel in accordance with section 32-2197.03 on the issuance of an approved timeshare public report only if the commissioner determines that there is a material and adverse change in the disclosures contained in the approved timeshare public report from those given to the purchaser in the proposed timeshare public report.

**32-2197.05. Escrow or trust account; agreement; evidence of completion; financial assurance**

A. A developer of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository one hundred per cent of all monies that are received during the purchaser's rescission period. The deposit of these monies shall be evidenced by an executed agreement between the escrow or trust account agent and the developer that includes the following provisions:

1. Monies may be disbursed to the developer by the escrow or trust account agent from the account only after expiration of the purchaser's rescission period and in accordance with the purchase agreement, subject to subsection B.
  2. If a purchaser cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the purchaser's monies have been previously refunded by the developer.
- B. If a developer contracts to sell a timeshare interest and the construction of any timeshare property in which the timeshare interest is located has not been completed, when the rescission period expires the developer shall continue to maintain in an escrow or trust account all monies received by the developer or on the developer's behalf from the purchaser under a purchase agreement either before or after the rescission period expires. The types of documentation that

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shall be required for evidence of completion include a certificate of occupancy, a certificate of substantial completion or an equivalent public safety inspection from an agency in the applicable jurisdiction or other evidence of completion acceptable to the commissioner or as provided by rule. Monies shall be released from escrow as follows:

1. If a purchaser properly cancels the purchase agreement pursuant to the agreement's terms, the monies shall be paid to the purchaser or paid to the developer if the developer has previously refunded the purchaser's monies.
2. If a purchaser defaults in the performance of the purchaser's obligations under the purchase agreement, the monies shall be paid to the developer.
3. If the developer defaults in the performance of the developer's obligations under the purchase agreement, the monies shall be paid to the purchaser.
4. If the monies of a purchaser have not been previously disbursed in accordance with paragraph 2 of this subsection, the monies may be disbursed to the developer by the escrow agent on the issuance of acceptable evidence of completion of construction.

C. In lieu of placing monies in escrow in accordance with this section, the commissioner may accept from the developer a surety bond, irrevocable letter of credit or other financial assurance acceptable to the commissioner or as provided by rule. Any acceptable financial assurance must be in an amount equal to or in excess of the monies that would otherwise be placed in escrow or in an amount equal to or in excess of the cost to complete the incomplete property in which the timeshare interest is located.

D. The developer shall make documents related to the escrow or trust account or escrow or trust obligation available to the commissioner on the commissioner's request. The developer shall maintain any disputed monies in the escrow account until either of the following occurs:

1. The developer receives a written direction agreed to and signed by all parties.
2. A civil action regarding the monies has been filed, in which case the developer shall deposit the monies with the court of appropriate jurisdiction.

**32-2197.08. Issuance of public report and amended public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report**

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format and may also be made available in CD-ROM or other electronic format as approved by the commissioner. The public report shall include the following:

1. The name and principal address of the owner and developer.
2. A description of the type of timeshare interests being offered.
3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.
4. A description of any accommodations and amenities that are committed to be built, including:

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- (a) The developer's schedule of commencement and completion of all accommodations and amenities.
  - (b) The estimated number of accommodations per site that may become subject to the timeshare plan.
5. A brief description of the duration, phases and operation of the timeshare plan.
6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:
- (a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.
  - (b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.
  - (c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.
7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.
8. A statement that by midnight of the seventh calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. However, if, by agreement of the parties through the purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding seven calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding seven calendar days.
9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.
10. Any restrictions on alienation of any number or portion of any timeshare interests.
11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.
12. The extent to which financial arrangements have been provided for completion of all promised improvements.
13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.
14. Any other information that the developer, with the approval of the commissioner, desires to include in the public report.
15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:
- (a) A description of each component site, including the name and address of each component site.
  - (b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.
  - (c) Each type of accommodation in terms of the number of bedrooms, bathrooms and sleeping capacity and a statement of whether or not the accommodation contains a full kitchen. For the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.
  - (d) A description of amenities available for use by the purchaser at each component site.

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(e) A description of the reservation system, including the following:

(i) The entity responsible for operating the reservation system.

(ii) A summary of the rules governing access to and use of the reservation system.

(iii) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first reserved, first served basis.

(f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.

(g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.

(h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan.

(i) Any other information reasonably required by the commissioner or established by rule necessary for the protection of purchasers of timeshare interests in timeshare plans.

(j) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. Except as otherwise provided in this subsection, the requirements prescribed by subsection A of this section apply to a developer's application for approval to use an amended public report for the sale of timeshare interests in a timeshare plan, including an amended public report to disclose and address a material change under section 32-2197.04. A developer may elect to prepare an amended public report for use in the sale of timeshare interests as follows:

1. The developer shall prepare the amended public report and provide a copy of the report to the commissioner with the submission of the application for an amended public report, including any notification required by section 32-2197.04, and shall comply with all other requirements of this article.

2. An amendment filing fee established pursuant to section 32-2197.07 shall accompany the application prescribed by paragraph 1 of this subsection.

3. On receipt of the application and amended public report, the department shall review and, within fifteen business days if the amendment adds less than six new component sites to the timeshare plan or within thirty calendar days if the amendment adds six or more new component sites to the timeshare plan, issue either a certification that the application and amended public report are administratively complete or a denial letter if it appears that the application, amended public report or timeshare plan is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or timeshare plan presents an unnecessary risk of harm to the public. If the commissioner has received the application and amended public report but has not issued a certification or a denial letter within the required time period, the application and amended public report are deemed administratively complete.

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4. The developer may commence sales or leasing activities as permitted under this article using an amended public report when the commissioner issues a certification of administrative completeness or as of the date the application and amended public report are deemed administratively complete pursuant to paragraph 3 of this subsection. The certification may be issued on paper or electronically.

5. Before or after the commissioner issues a certification of administrative completeness or, if applicable, after the application and amended public report are deemed to be administratively complete pursuant to paragraph 3 of this subsection, the department may examine any public report, timeshare plan or applicant that has applied for or received the certification. If the commissioner determines that the public report, timeshare plan or applicant is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154, 32-2157 or 32-2197.14. If the developer immediately corrects the deficiency and fully complies with state law, the commissioner shall promptly vacate any action that the commissioner may have commenced pursuant to section 32-2154, 32-2157 or 32-2197.14.

6. The department shall provide forms and guidelines for the submission of the application and amended public report pursuant to this subsection.

C. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.  
2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

**Arizona Department of Real Estate**  
**Arizona Revised Statutes Providing Rule Authority**  
**Five Year Rule Review**  
**A.A.C. Title 4, Chapter 28, Articles 4, 7, 8 and 12**

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use that would clearly be detrimental to property values in that neighborhood.

D. If the timeshare property is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

E. In areas outside of active management areas, if the timeshare property is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the timeshare property has an adequate water supply.

2. The developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The timeshare property was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

F. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

G. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

**32-2198.10. Advertising plans; disclosures; lotteries and drawings**

A. Any advertising, communication or sales literature, including oral statements by salespersons or any other person, shall not contain:

**Arizona Department of Real Estate**  
**Arizona Revised Statutes Providing Rule Authority**  
**Five Year Rule Review**  
**A.A.C. Title 4, Chapter 28, Articles 4, 7, 8 and 12**

1. Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which such statements were made.
  2. Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible.
  3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.
- B. It is unlawful for any owner, developer, agent or employee of any membership camping project or other person with intent directly or indirectly to sell membership camping contracts to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.
- C. This section does not apply to the owner or publisher of a newspaper or magazine or to any other publication of printed matter in which an advertisement appears or to the owner or operator of a radio or television station which disseminates an advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.
- D. The commissioner may adopt rules permitting lotteries and drawings for the purpose of inducing prospective buyers to attend a sales presentation or to take a campground tour and establishing requirements and conditions for lotteries and drawings. These requirements and conditions shall include that:
1. No membership camping operator may hold a lottery or drawing who does not also have pursuant to section 32-2198.14 a recorded nondisturbance agreement, a bond or irrevocable letter of credit or some other financial assurance acceptable to the commissioner. The commissioner may require the campground operator to provide an independent auditor's report by a certified public accountant or other expert concerning the campground operator's financial condition.
  2. No lottery or drawing may be held unless approved in advance by the commissioner.
  3. The membership camping operator shall submit an application for approval of a lottery or drawing on a form approved by the commissioner and a fee of at least one hundred dollars and not more than two hundred fifty dollars.
  4. The department shall require the applicant to pay all costs of field inspections to audit or oversee the operation of any drawing or lottery, including mileage, lodging and time spent in the field inspections and any experts employed to assist the department.
  5. The deed, title, cash amount or other prize or guarantee of the prize shall be held by the department or in a neutral escrow by a disinterested third party approved by the department, pending the award of the prize to the lottery or drawing winner.
  6. Any lottery or drawing shall be limited in time, scope and geographic location. The estimated odds of winning and terms of the lottery or drawing shall be disclosed in writing to participants.
  7. No fee may be charged to any person who participates in a lottery or drawing.

**Arizona Department of Real Estate**  
**Arizona Revised Statutes Providing Rule Authority**  
**Five Year Rule Review**  
**A.A.C. Title 4, Chapter 28, Articles 4, 7, 8 and 12**

8. The commissioner may deny or revoke any authorization to conduct a lottery or drawing to any person if the campground operator or broker or a salesperson violates any statute or rule adopted or order issued by the commissioner.
  9. Violations of any requirements or conditions set forth in this section or by rule shall be grounds for the commissioner to deny future applications to hold lotteries or drawings.
  10. The membership camping broker is responsible at all times for the lawful and proper conduct of any lottery or drawing.
- E. No campground facility may be advertised or promoted in any way that appears to guarantee the unimpeded use of or access to campground properties, if a blanket encumbrance exists on the properties, unless a nondisturbance or other acceptable agreement has been recorded, filed and accepted by the department pursuant to section 32-2198.14.

## Real Estate Fees by Western States

State	Salesperson Original License	Salesperson Renewal License	Broker Original License	Broker Renewal	Entity License Fee	Two Year License	Three Year License	Four Year License
*Arizona 	\$ 50	\$ 125 In office \$ 60 Online	\$ 125	\$ 250 In office \$ 150 Online	\$ 60	X		
California	\$ 245	\$ 245	\$ 300	\$ 300	\$ 300			X
*New Mexico 	\$ 270	\$ 270	\$ 270	\$ 270	-		X	
*Oregon 	\$ 300	\$ 300 Active \$ 150 Inactive	\$ 300 Active \$ 150 Inactive	\$ 300 Active \$ 1150 Inactive	\$ 310	X		
Washington	\$ 146	\$ 146	\$ 210	\$ 210	\$ 210	X		
*Nevada 	\$ 125	\$ 180	\$ 145	\$ 220	-	X		
*Texas 	\$ 205	\$ 110	\$ 305	\$ 217	\$ 217	X		
*Colorado 	-	-	\$ 485	\$ 165	\$ 695		X	
*Utah 	\$ 152	\$ 60	\$ 158	\$ 66	\$ 200	X		

*\* Arizona fees adjusted down in FY2018 and FY2020 to lower fee revenue. (Effective September 3, 2019)*

*\* Each fee listed above in New Mexico increased \$30 from this time last year.*

*\* Each fee listed above in Oregon increased \$40 - \$200 from this time last year.*

*\* The Salesperson original license fee increased in Nevada \$10.*

*\* Fees in Texas decreased \$30 - \$50 from this times last year, with the exception of one fee that increased by \$12.*

*\* Fees listed above in Colorado decreased in one category by \$85, and increased in the others by \$125 and \$222.*

*\* Fees listed above in Utah increased \$12 - \$18.*

**Arizona Department of Real Estate  
Education Requirement Analysis  
Compiled October 2019**

**Pre License Education**

One of the primary differences in the regulation of the real estate industry across the country is with regard to the license classifications. Some states have single licensure, while other states practice the Arizona model of dual licensure, the two licenses being the broker license and the real estate salesperson license. This variance does not equate to stringency of regulation; however the dual licensure model creates a level of accountability and supervisory responsibility on the part of the Designated Broker who employs the real estate salesperson licensee.

Arizona requires 90 hours of pre license education for salespersons, and 90 hours of pre license education with three years of real estate experience for brokers. The states with equivalent or a greater number of pre license education hours for salespersons are California (135), Delaware, Idaho (90), Iowa (96), Kentucky (96), Louisiana (90), Nevada (90), Ohio (120), Oregon (150), Oklahoma (90), South Carolina (90), Texas (180), Utah (120), Virginia (180), and West Virginia (90).

The states with equivalent or a greater number of pre license education hours for brokers are California (360), Delaware (99), D.C. (135), Idaho (90), Illinois (90), Kentucky (336), Louisiana (150), Michigan (90), Mississippi (120), New Mexico (90), Ohio (90), Oklahoma (90), Pennsylvania (240), South Carolina (150), South Dakota (116), Tennessee (90), Texas (270), Utah (120), Virginia (180), Washington (90), and West Virginia (180). These statistics demonstrate that Arizona's education requirements are consistent with other state's real estate education requirements, or that many states require a greater number of pre license education hours.

**Post License Education and Continuing Education (CE)**

Some states further require a "post-license" education and/or a provisional license period after the licensee obtains their license. The structure of the post-license education may vary from state to state.

Arizona requires 24 hours of continuing education for salespersons, and 24 hours and a 9 hour Broker Management Clinic for brokers every two years. The states with equivalent or a higher number of continuing education hours are California (45), Iowa (36), Nevada (24), New Mexico (36), Ohio (30), Oregon (30), Washington (30), and Wyoming (45).

**Schools and Instructors**

Further, some states license the schools, instructors and courses similar to Arizona; however there are also states that are not in the business of regulating the schools and the education portion of the industry. Arizona appears to be in the majority of states that are responsible for licensing real estate schools, instructors and courses.

*\*The education hours listed in this section is from research of other state's real estate agencies, boards, and commission websites.*

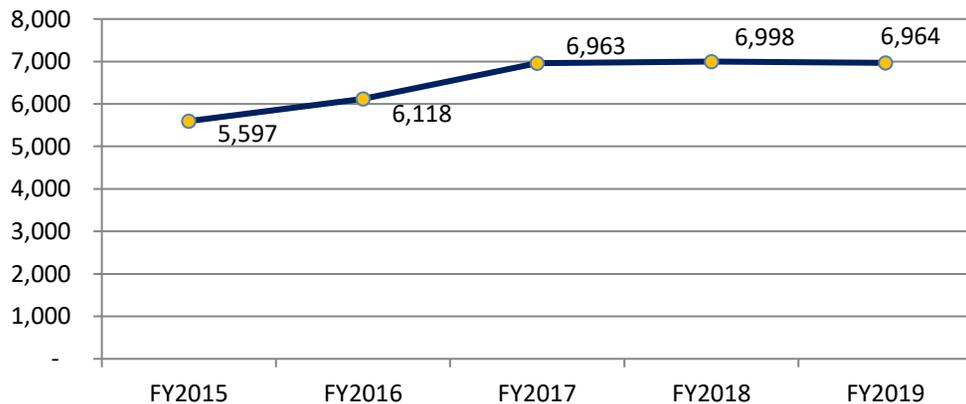


# New & Renewed Licenses vs. Online Usage

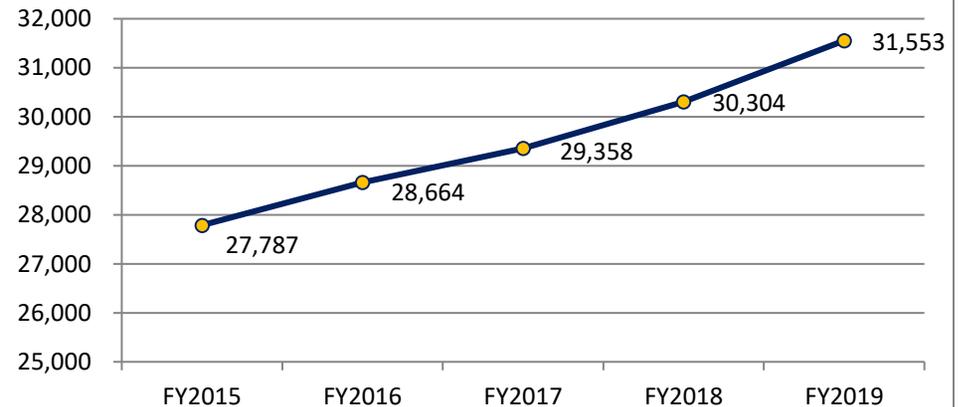
	Brokers				Salespersons				Entities			
	Broker New	Broker Renewal	Broker Online Renewal	Broker Online Usage	Sales New	Sales Renewal	Sales Online Renewal	Sales Online Usage	Entity New	Entity Renewal	Entity Online Renewal	Entity Online Usage
FY2001	581	5,342	n/a	n/a	4,781	13,301	n/a	n/a	219	297	n/a	n/a
FY2002	587	5,249	n/a	n/a	6,250	14,499	n/a	n/a	185	282	n/a	n/a
FY2003	592	5,523	n/a	n/a	7,520	15,053	n/a	n/a	201	294	n/a	n/a
FY2004	639	5,279	n/a	n/a	8,819	16,727	n/a	n/a	221	278	n/a	n/a
FY2005	831	5,646	542	0	12,349	18,532	2,194	12%	317	350	n/a	n/a
FY2006	980	5,474	2,356	43%	12,255	21,354	12,407	58%	473	349	n/a	n/a
FY2007	959	5,997	4,083	68%	7,704	25,026	20,564	82%	304	336	n/a	n/a
FY2008	1036	6,092	5,354	88%	4,953	25,897	24,410	94%	276	379	269	71%
FY2009	866	5,937	5,652	95%	3,774	23,331	22,496	96%	319	427	392	92%
FY2010	797	1,050	979	93%	3,935	4,388	4,153	95%	636	489	423	87%
FY2011	546	1,058	1,015	96%	2,850	3,574	3,463	97%	469	502	463	92%
FY2012	463	5,406	5,257	97%	3,069	18,406	18,089	98%	437	264	256	97%
FY2013	486	6,212	6,057	98%	4,055	20,460	20,162	99%	449	325	312	96%
FY2014	473	6,235	6,110	98%	4,896	20,934	20,515	98%	326	345	327	95%
FY2015	408	6,259	6,192	99%	5,189	21,528	21,370	99%	333	397	375	95%
FY2016	424	6,244	6,354	95%	5,694	22,420	26,764	95%	369	340	327	94%
FY2017	460	6,245	6,146	98%	6,503	23,113	22,972	99%	363	372	360	95%
FY2018	512	6,129	6,063	99%	6,486	24,175	24,014	99%	378	401	395	95%
FY2019	570	6,125	6,065	99%	6,394	25,428	25,272	99%	340	371	361	95%
*FY2020	541	6,127	6,064	99%	6,440	24,801	24,643	99%	359	386	378	95%

*\*Projected*

**Original Salesperson & Broker Licenses by Fiscal Year**



**Renewal Salesperson & Broker Licenses by Fiscal Year**

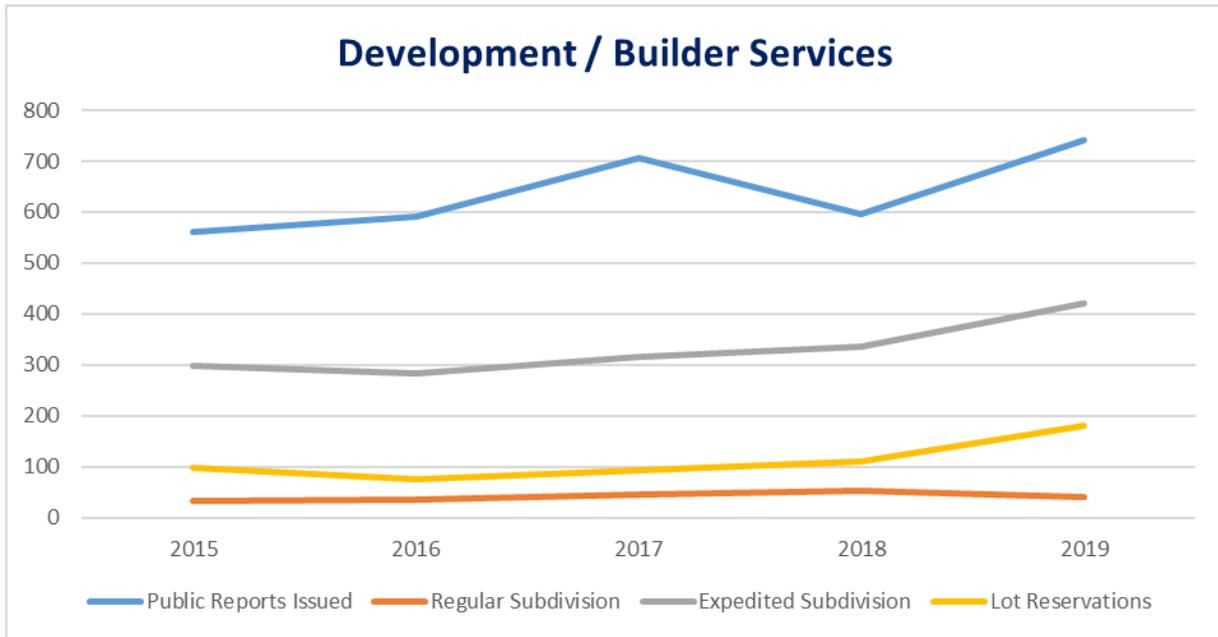




## Development / Builder Services

	2015	2016	2017	2018	2019	*2020
Public Reports Issued	562	591	706	596	741	575
Regular Subdivision	33	35	46	53	40	30
Expedited Subdivision	298	283	316	337	422	349
Lot Reservations	98	75	94	111	181	196

\*Year to Date (As of 4/13/2020)



**BOARD OF MESSAGE THERAPY (F19-1004)**

Title 4, Chapter 15, Board of Massage Therapy



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** May 5, 2020

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

**FROM:** Council Staff

**DATE:** April 9, 2020

**SUBJECT: BOARD OF MASSAGE THERAPY (F19-1004)**  
Title 4, Chapter 15, Articles 1-4, Board of Massage Therapy

**Revised Report as to R4-15-201(A)(2) and R4-15-201(C)**

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### Summary

As a reminder, at its January 14, 2020 Council Meeting, the Council voted to approve the Board of Massage Therapy's (Board) five year review report (5YRR), but voted to return the report as it related to R4-15-201(A)(2), relating to hourly educational requirements for regular license application, and R4-15-201(C), relating to English language testing requirements for non-native English speakers. For the two parts of this rule for which the report was returned, the Council voted to require the Board to submit a revised report that addressed its concerns within 60 days.

For R4-15-201(A)(2), the Council voted to require the Board to provide, within 60 days, a revised report which includes (1) an analysis of whether the probable benefits of the rule outweigh within this state the probable costs of the rule, and whether 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, pursuant to A.R.S. § 41-1056(A)(9); and (2) a proposed course of action for this rule.

For R4-15-201(C), the Council voted to require the Board to provide, within 60 days, a revised report which includes (1) an analysis of whether the rule is effective in achieving its objectives pursuant to A.R.S. § 41-1056(A)(1) and whether the probable benefits of the rule outweigh within this state the probable costs of the rule, and whether 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, pursuant to A.R.S. § 41-1056(A)(9); and (2) a proposed course of action for this rule.

In response, the Board submitted revised materials, including a cover letter, revised report, cost-benefit analysis, and supporting materials. Those materials are attached for the Council's review. The Board now proposes to amend the rule in response to the Council's concerns in the next year. For R4-15-201(A)(2), the Board proposes to amend the education hour requirement to reduce it from 700 hours to a number that is the least necessary to achieve its regulatory objective. However, the Board does not state the extent to which it plans to reduce the hour requirement. For R4-15-201(C), the Board proposes to amend this rule to remove the TOEFL and TOEIC exam requirements because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component.

Council staff finds that this revised report, as it relates to R4-15-201(A)(2) and R4-15-201(C), addresses the Council's concerns as stated during the January 14, 2020 Council Meeting. While Council staff recommends approval of the revised report as it relates to this rule, Council staff encourages the Council to inquire about the specific reduction the Board plans to make to its hourly education requirement.

Letter to accompany Revised 5YRR:

At the January 13, 2020 Council Meeting, the Governor's Regulatory Review Council requested the Board submit a revised Five-year Review Report that includes the following:

For R4-15-201(A)(2): (1) an analysis of whether 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, pursuant to A.R.S. § 41-1056(A)(9); and (2) a proposed course of action for this rule; and

For R4-15-2-1(C): (1) an analysis of whether the rule is effective in achieving its objectives pursuant to A.R.S. § 41-1056(A)(1) and whether 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, pursuant to A.R.S. § 41-1056(A)(9); and (2) a proposed course of action for this rule.

The Board has revised its Five-year Review Report as follows:

The Board has revised its Five-year Review Report to specifically include the analysis required under A.R.S. § 41-1056(A)(9) for R4-15-201(A)(2) with regard to whether the Board has determined the rule imposes the least burden on the applicant necessary to achieve the regulatory objective. The revised analysis indicates that the Board determined that the rule could be less burdensome by reducing the number of hours required to be licensed. In analyzing whether the rule imposes the least burden on applicants, the Board determined that the probable benefits of the rule (i.e. knowledge of best practices, safety measures, ethics, etc.) outweigh the probable costs the rule (i.e. time and money spent on any hours required above the statutory minimum), so long as the number of hours required to be licensed are the least necessary to achieve the regulatory objective (i.e. the knowledge and experience necessary to practice safely). The Proposed Course of Action section of the report indicates that the Board intends to complete a rulemaking, with the Governor's approval, no later than January 2021 to reduce the number of hours to the least necessary to achieve the regulatory objective.

The Board has revised its Five-year Review Report to specifically include the analysis required under A.R.S. § 41-1056(A)(1) for R4-15-201(C) with regard to whether the rule is effective in achieving its objective. In analyzing whether the rule is effective in achieving its regulatory objective, the Board also provides analysis required under A.R.S. § 41-1056(A)(9) that shows that the Board determined the rule could be less burdensome by removing the TOEFL and TOEIC requirements and then the rule would impose the least burdens and costs on applicants necessary to achieve the regulatory objective required under the Board's statutes relating to effective communication. The Proposed Course of Action section of the report indicates that the Board intends to complete a rulemaking, with the Governor's approval, no later than January 2020 to remove the TOEFL and TOEIC requirement.

The revised report states:

- (1) The Board needs to amend R4-15-201(A)(2) to reduce the requirement for 700 classroom and clinical hours to be completed because A.R.S. § 32-4222(B)(1) requires the applicant to complete a minimum of 500 hours at a Board-recognized school. So long as the number of hours is the least necessary to ensure that the applicant has the knowledge and experience to practice

massage safely, then the probable benefits (i.e. knowledge of best practices, safety measures, ethics, etc.) of the rule outweigh the probable costs (i.e. time and money spent on any hours required above the statutory minimum) of the rule. The Board intends to complete a rulemaking within in the next year and with approval from the Governor's office to ensure the number of hours is the least necessary to achieve its regulatory objective. Reducing the hours to the least number necessary to ensure adequate knowledge and experience to practice safely would ensure the rule is least burdensome on the applicant while still achieving the regulatory purpose, thereby reducing the economic impact of the rule and increasing its effectiveness.

- (2) R4-15-201(C) requires particular scores on the TOEFL or TOEIC exams. A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The Board believes the TOEFL and TOEIC exam requirements can be removed from this rule because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component. R4-15-201(D)(1) requires a passing score on either the NCBTMB or FSTMB examination. These exams include a communication component to ensure that the applicant can communicate effectively. Thus, the TOEFL and TOEIC are not necessary and removing the requirement for particular scores on a TOEFL or TOEIC exam will reduce the burden of becoming licensed while still achieving the regulatory purpose of ensuring that applicants can communicate and practice safely in Arizona, thereby increasing effectiveness of the rule. By reducing the burden of the rules while still complying with statutory requirements, the Board can ensure that the probable benefits of the rule (i.e. ensuring effective communication) outweigh the probable costs (i.e. exam showing effective communication).

The Board believes the revised report provides the additional analyses the Council requested and required under A.R.S. § 41-1056(A)(1) and (A)(9). Based on the foregoing information above, the Board requests approval of the revised report as it relates to R4-15-201(A)(2) and (C).

**Five-year-review Report**

**A.A.C. Title 4. Professions and Occupations**

**Chapter 15. Board of Massage Therapy**

**Articles 1-4**

**Submitted for September 2019**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 32-4203(A)(7)

Specific Statutory Authority:

R4-15-101. Definitions: A.R.S. § 32-4203(A)(7)

R4-15-102. Fees: A.R.S. §§ 32-4222(A)(6) and 32-4227

R4-15-103. Ethical Standards: A.R.S. § 32-4203(A)(6)

R4-15-201. Qualifications; Application for a Regular License: A.R.S. §§ 32-4203(A) and (B) and 32-4222

R4-15-203. Application for a License by Reciprocity: A.R.S. § 32-4223

R4-15-204. Board-recognized School: A.R.S. §§ 32-4201(2), 32-4203(A)(5), 32-4228

R4-15-205. Application for Renewal of License: A.R.S. § 32-4225

R4-15-207. Licensing Time-frames: A.R.S. §§ 41-1072 through 41-1077

Table 1. Licensing Time-frames (in Days): A.R.S. §§ 41-1072 through 41-1077

R4-15-301. Required Continuing Education Hours: A.R.S. §§ 32-4203(A)(5) and 32-4225

R4-15-302. Approval of Continuing Education: A.R.S. § 32-4225

R4-15-303. Documentation of Completion of Continuing Education: A.R.S. § 32-4225

R4-15-401. Rehearing or Review of Board’s Decision: A.R.S. § 41-1092.09

**2. The objective of each rule:**

Rule	Objective
R4-15-101. Definitions	The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.
R4-15-102. Fees	The objective of the rule is to specify the fees the Board charges for its licensing activities.
R4-15-103. Ethical	The objective of the rule is to protect the public by establishing ethical

Standards	standards with which a licensee must conform.
R4-15-201. Qualifications; Application for a Regular License	The objective of the rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties.
R4-15-203. Application for a License by Reciprocity	The objective of the rule is to specify the requirements for obtaining a license by reciprocity.
R4-15-204. Board-recognized School	The objective of the rule is to identify schools the Board recognizes and specify procedures for other schools to obtain recognition.
R4-15-205. Application for Renewal of License	The objective of this rule is to specify the requirements for renewal of a license.
R4-15-207. Licensing Time-frames	The objective of the rule is to specify the time frames within which the Board will act on a license application.
Table 1. Licensing Time-frames (in Days)	The objective of the rule is to specify in table form the time frames within which the Board will act on a license application.
R4-15-301. Required Continuing Education Hours	The objective of the rule is to specify the number of hours of continuing education required for license renewal and the manner in which the hours must be obtained.
R4-15-302. Approval of Continuing Education	The objective of the rule is to specify continuing education activities that are approved by the Board.
R4-15-303. Documentation of Completion of Continuing Education	The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement.
R4-15-401. Rehearing or Review of Board's Decision	The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. **Are the rules effective in achieving their objectives?**

**Mostly yes**

Rule	Explanation
R4-15-201(A)(2)	<p>The Board needs to amend R4-15-201(A)(2) to reduce the requirement for 700 classroom and clinical hours to be completed because A.R.S. § 32-4222(B)(1) requires the applicant to complete a minimum of 500 hours at a Board-recognized school. So long as the number of hours is the least necessary to ensure that the applicant has the knowledge and experience to practice massage safely, then the probable benefits (i.e. knowledge of best practices, safety measures, ethics, etc.) of the rule outweigh the probable costs (i.e. time and money spent on any hours required above the statutory minimum) of the rule. The Board intends to complete a rulemaking within in the next year and with approval from the Governor’s office to ensure the number of hours is the least necessary to achieve its regulatory objective. Reducing the hours to the least number necessary to ensure adequate knowledge and experience to practice safely would ensure the rule is least burdensome on the applicant while still achieving the regulatory purpose, thereby reducing the economic impact of the rule and increasing its effectiveness.</p>
R4-15-201(C)	<p>A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The Board believes the TOEFL and TOEIC exam requirements can be removed from this rule because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component. R4-15-201(D)(1) requires a passing score on either the NCBTMB or FSTMB examination. These exams include a communication component to ensure that the applicant can communicate effectively. Thus, the TOEFL and TOEIC are not necessary and removing the requirement for particular scores on a TOEFL or TOEIC exam will reduce the burden of becoming licensed while still achieving the regulatory purpose of ensuring that applicants can communicate and practice safely in Arizona, thereby increasing effectiveness of the rule. By reducing the burden of the rules while still complying with statutory requirements, the Board can ensure that the probable benefits of the rule (i.e. ensuring effective communication) outweigh the probable costs (i.e. exams showing effective communication).</p>
R4-15-302(1)	<p>As soon as the FSMTB (Federation of State Massage Therapy Boards) begins to offer or approve continuing education, the Board intends to add it as an accepted</p>

	provider of continuing education.
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**4. Are the rules consistent with other rules and statutes? **Mostly yes****

Rule	Explanation
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	These subsections require the signature on an application to be notarized. However, A.R.S. § 32-4224(A) requires the application to be filed under oath or affirmation, which is different from notarization. These subsections need to be amended in order to remove the notarization requirements and provide that the application shall be submitted to the Board under oath or affirmation.
R4-15-203	This Section refers to A.R.S. § 32-4223 for reciprocity requirements. However, that statute does not take into account the recently enacted A.R.S. § 32-4302 regarding reciprocity for spouses of active duty members of the armed forces accompanying the member to this state. The Board needs to amend this rule in order to ensure that reciprocity requirements for spouses of active duty members of the armed forces accompanying the member to this state are consistent with A.R.S. § 32-4302.
R4-15-204	This rule is consistent with A.R.S. § 32-4228 which indicates which massage therapy schools the Board must recognize. However, this rule does not provide for schools located in a Canadian province or schools that are accredited to offer massage therapy education by an agency that is recognized by the secretary of the U.S. Department of Education. The Board needs to amend this rule in order to recognize such schools. Specifically, the Board needs to amend subsections (B)(1) and (B)(2) to clarify that the applicant or school must show that the school is approved by an agency similar to the Board for Private Postsecondary Education or accredited by an agency approved by the U.S. Department of Education.

**5. Are the rules enforced as written? **Mostly yes****

Rule	Explanation
R4-15-201(B)(1)(p) and R4-15-203(1)(c)	As mentioned above, these subsections require the signature on an application to be notarized. This is inconsistent with Board practice. The Board has not required notarization since May 2018 and needs to amend this rule to be more consistent

	with statute.
R4-12-201(B)(1)(b)	A.R.S. § 32-4224 allows the Board to establish rules requiring information on a license application. However, as of 2014, the Board requires a passport style photo of every applicant, so this subsection is no longer necessary or enforced. The Board does not ask an applicant for information regarding the applicant's weight, height, eye color, or race. The Board needs to amend this rule to remove these requirements.

**6. Are the rules clear, concise, and understandable? **Mostly yes****

Rule	Explanation
R4-15-102(1)	A.R.S. § 32-4227 identifies maximum fees that the Board may charge for various licenses and the Board has not exceeded these maximum fees because this subsection indicates that the Board only charges \$195 for a license application and the license application fee includes issuance of the initial license if the application is approved. Moreover, the Board waives application fees for applicants who show they qualify for a waiver pursuant to A.R.S. § 41-1080.01. Nevertheless, this subsection does not clarify that the Board also collects the fee that is required by the Department of Public Safety (DPS) pursuant to R13-1-401 to process fingerprints for federal background checks pursuant to R4-15-201 and R4-15-203 and authorized under A.R.S. § 32-4222(A)(10). The Board needs to amend this rule to clarify that it collects the fee for DPS to process fingerprint cards.
R4-15-201(A)(1)	This subsection requires applicants who submit an application before January 1, 2008 to complete 500 hours of education and supervised clinical instruction. However, this section is no longer necessary and the Board needs to remove this subsection in order to make the rule clearer and more concise.

**7. Has the agency received written criticisms of the rules within the last five years? **No****

Rule	Explanation
R4-15-201(A)(2)	The Board has received verbal comments from potential applicants indicating that the 700 classroom and clinical hours of supervised instruction are not in statute. The Board responds that A.R.S. § 32-4222(C) authorizes the Board to increase the

	<p>minimum number of classroom hours of supervised instruction at a Board-recognized school that an applicant must complete successfully in order to ensure that massage therapists have the necessary knowledge and experience to practice massage therapy safely. National and state associations such as the American Massage Therapy Association and the Arizona Council of Massage Therapy Educators recommended the Board increase the classroom and supervised clinical hours. Upon further analysis, the Board increased the classroom and supervised clinical hours to 700 which follows the nationwide trend of increasing to at least this number or more to ensure massage therapists have the necessary training to practice safely.</p>
R4-15-301(B)	<p>The Board has received verbal comments from licensees suggesting a licensee should be able to obtain all rather than only half the required continuing education from distance learning. The Board responds that A.R.S. § 32-4225(E) specifies that the licensee must complete at least 24 hours of continuing education in the practice of massage therapy as approved by the Board. In light of an increasingly mobile workforce and advances in technology, the Board allows an applicant to complete 12 hours of continuing education from a long-distance format. However, due to the hands-on nature of massage therapy, the Board believes it is important to require at least 12 hours of continuing education through physical, in-person interaction in order to ensure that massage therapists maintain the necessary hands-on skills and knowledge to practice massage therapy safely.</p>

**8. Economic, small business, and consumer impact comparison:**

Currently, the Board licenses approximately 10,327 individuals. During FY2019, the Board received new applications from 1,124 individuals, of whom, 42 were applicants by reciprocity, resulting in \$535,142 collected in fees. All the rules in Articles 1 through 3 were amended or made in a rulemaking that went into effect on August 5, 2014 (20 A.A.R. 2246). The 2014 rulemaking was completed to make the rules consistent with 2013 legislation as well as Board statutes and practice. The most significant changes included adding ethical standards with which a licensee must comply, including amending the definition of “good moral character,” and establishing English communication proficiency standards. In the EIS associated with the 2014 rulemaking, the Board determined that the changes regarding “good moral character” and English proficiency could have potential costs for applicants because it is possible that both changes could prevent an individual from qualifying for licensure. However, as discussed

above, state law requires the Board to establish English proficiency requirements and ethical standards (A.R.S. § 32-4203(A)(6)), so the Board determined both changes were necessary to comply with state laws to protect the health and safety of consumers of massage therapy services. The 2014 EIS also indicated that the changes regarding continuing education and examinations may produce cost savings for licensees and applicants by reducing the burden of becoming licensed and maintaining a license. Ultimately, the Board anticipated that the costs of the rulemaking would be minimal as the amendments simply made the rules consistent with legislative changes. On average, only 7 applicants per year are unable to meet the qualifications for licensure. Thus, the economic impact of these rules has not varied from the impact anticipated in the 2014 EIS.

The one rule in Article 4, Rehearing or Review of Board's Decision, was made in 2006 and reviewed in a five-year review report approved by the Governor's Regulatory Review Council in 2014. The rulemaking reduced the Board's fee for a regular license (R4-15-102(A)(1)), established standards for continuing education (Article 3), added requirements for license renewal (R4-15-205), added a fee for a renewal license (R4-15-102(A)(4), and added a fee for delinquent license renewal (R4-15-102(A)(5)). The Board receives approximately 22 delinquent license renewal fees each month. The costs that resulted from this rulemaking are consistent with the costs projected in the EIS associated with that rulemaking. In the EIS associated with that rulemaking the Board estimated the costs to the Board or a licensee to be minimal and less than \$1,000. Since the promulgation of the rule, the costs have been minimal. Since 2014, the Board has received 3 motions for rehearing. A quarter of the complaints involved allegations of sexual assault. The Board reviews all of the complaints received, opens cases for further investigation at a rate of approximately 25 each year, and takes disciplinary action pursuant to A.R.S. § 32-4253. The rules provide for background checks to prevent individuals with a significant history of sexual crimes from obtaining a massage therapy license. The rules also allow the Board to investigate such allegations of a licensee and take necessary steps to either discipline licensees or revoke licenses. Since 2014, the Board has conducted 49 disciplinary hearings and disciplined 41 licensees. The Board has also revoked 17 licenses and placed 18 licensees on probation and only 2 individuals submitted a motion for rehearing or review. Thus, the rules are narrowly tailored to address conduct giving rise to the majority of the complaints and have been effective in addressing those complaints.

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 5YRR?** Yes

In a 5YRR approved by Council on January 5, 2010, the Board indicated it intended to amend R4-15-102 and R4-15-203. The Board amended both rules as part of a rulemaking that amended all rules in Articles 1 through 3 in 2014 (See 20 A.A.R. 2246). This rulemaking enabled the Board to have a 2014 5YRR of the amended rules rescheduled. The Board was not able to reschedule the 5YRR of R4-15-401. That rule was reviewed in a report approved by Council on February 3, 2015. In that report, the Board concluded no action was needed regarding R4-15-401.

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 are necessary to protect the health and welfare of the public. Massage therapists increasingly are part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers. As such, these rules are necessary to ensure that massage therapists have the necessary training, knowledge, and experience to practice massage therapy without injury to their clients. These rules also provide for necessary background checks of massage therapists to ensure that the Board does not license individuals that could pose a threat to clients, particularly when clients may be in vulnerable situations. Moreover, these rules simply enforce statutory requirements that the Board has been charged with administering. It is statute that requires an individual to be licensed to practice massage therapy (A.R.S. §§ 32-4221(A) and 32-4255(A)); to submit an application to the Board (A.R.S. §§ 32-4223 and 32-4224); to renew a license biennially (A.R.S. § 32-4225); pay fees for a license (A.R.S. § 32-4227); and participate in continuing education (A.R.S. § 32-4225). Statute requires massage therapy schools to obtain recognition from the Board (A.R.S. § 32-4228). Additionally, prior to state regulation of massage therapists, massage therapists faced a significant burden of paying multiple fees to obtain licensure in multiple municipalities with significantly varying licensing requirements. State regulation through the Board and its administrative rules simplified regulatory requirements in the massage industry, thereby reducing the burden of regulation while increasing the benefits to public health and safety. Thus, with the exception of the proposed amendments identified in this report, these rules impose the least burden on regulated persons while still achieving the underlying regulatory objective.

The rules establish the exact fees charged by the Board, the content of applications, and standards for recognizing massage therapy schools and accepting continuing education.

12. **Are the rules more stringent than corresponding federal laws?**

No

There is no federal law uniquely applicable to the reviewed 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 Board's statutes (See A.R.S. §§ 32-4221 and 32-4255), require individualized licenses be issued so a general permit is not applicable.

14. **Proposed course of action:**

The Board intends to request approval from the Governor's Office to proceed with rulemaking no later than January 2020 and intends to complete a rulemaking that addresses the issues identified in this report as soon as it receives approval to do so.



Douglas A. Ducey,  
Governor

# Arizona State Board of Massage Therapy

*Protecting the Public,  
Serving the Industry*

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**Licensing Specialist**

Charlotte Muhammad

**Licensing Specialist**

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**Board Minutes  
Administrator**

(contractor)

## MEMORANDUM

TO: Ms. Nicole Sornsins, Chair  
Council Member Christopher Ames  
Council Member Brenda Burns  
Council Member John Sundt  
Council Member Frank Thorwald  
Council Member Connie Wilhelm  
Mr. Simon Larscheidt, Staff Attorney  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite #305  
Phoenix, Arizona 85007

FROM: Tom Aughterton

SUBJ: Arizona Massage Board Five-Year Regulatory Review

DATE: March 17, 2020

On this date, we have submitted to GRRC staff, the latest segment of information from the Arizona Massage Board related to the GRRC Five-Year review. There are two attachments accompanying this transmittal letter to Mr. Larscheidt.

The Board is providing a third document which is a detailed spreadsheet workup, in response to the GRRC staff inquiry about a cost-benefit analysis on massage licensee hours in statute versus the additional amount currently stipulated in Board rule.

We would ask the Council's indulgence as final adjustments are made to that document which is coming from Ms. Mara Concordia in Tucson, who has been volunteering her time and research for the Board's task force.

As soon as we receive that from her, we will immediately transmit that report to GRRC staff as well. We believe we can provide that by end of this week and thank you for your understanding for the delay with this amendment against the current backdrop of the health crisis which has begun to impact some operations related to the Board's response.

## Summary of Task Force Cost Benefit Analysis of Massage Education Hours

**GRRC Question:** For every hour of classroom education required above the 500-hour statutory minimum, what is the appreciable benefit? Is the 700-hour requirement chosen by the Board the least burdensome and costly requirement necessary to achieve the underlying regulatory objectives?

First, we identified the regulatory objectives.

### From the AMTA – American Massage Therapy Association defining regulatory objectives

#### Why We Need Massage Therapy Regulations:

Massage therapy has a significant impact on a person's health and well-being. The public has a right to expect that a massage therapist has the qualifications needed to practice effectively and safely.

Legal recognition of the practice of massage therapy and clearly stated requirements to practice are essential to promote the profession and protect the health, safety, and welfare of the general public.

#### Reasons for Massage Therapy Regulation

- Legal recognition of massage therapy in the form of state licensing creates standards of minimum competency. Competency is measured and enforced through formal education, training, and examination requirements.
- Legal recognition of massage therapy ensures that individuals have met the eligibility requirements needed to practice massage therapy and that they are qualified to represent themselves to the public as state licensed massage therapists.
- By providing a legal definition of the scope of massage therapy practice, professional licensure helps consumers identify the responsibilities and services unique to a massage therapist. It allows consumers to select the most appropriate massage therapy professional for their needs and brings the benefit of open access to the selection process.
- Legal recognition of massage therapy through licensure enables a state or jurisdiction to discipline a massage therapist. States do not have the ability to regulate a profession that is not formally recognized in statute. Professional licensing laws enhance public safety by enforcing disciplinary actions against non-compliant practitioners.
- Legal recognition of massage therapy through licensing protects the public in other ways as well. It establishes a consistent standard of practice which is enforceable by a professional code of ethics. In addition, it establishes a formal grievance process for consumers that helps prevent unethical and/or non-compliant massage therapists from continuing to practice.

**GRRC Question:** What are the costs and benefits of all hours above the statutory 500 to the rule of 700 hours? Please see the attached supporting documents for more details and cited references.

Summary of analysis: This task is almost an impossible question to answer purely through mathematics due to the large variance in tuition costs and benefits can be quite subjective.

Below is a summary of potential benefits from each stakeholder's perspective and how it relates back to the regulatory objectives.

- Consumer perspective: Formally trained, tested, competent, ethical therapists are readily available to meet demand. See attached handout number 2 – Table 4- study of perspective on competencies desired. Regulatory objectives: Competency, standards, and grievance/disciplinary process.
- Students/potential licensees: More education hours tend to lead to more and better employment opportunities with a higher degree of employment longevity. This leads to higher income potentials and greater job satisfaction. Student loan access is available only from accredited schools and depending on crediting body higher hour programs qualify for larger grants and/or loans. This financial access reduces financial barriers to entering the profession. In addition, research indicates that students have higher graduation rates and higher student loan repayment rates when attending university-based programs. If they pursue self-employment this may aid in reducing the need for additional education right away after graduation to be able to compete. Higher education in general is linked to higher income earning potential in almost all fields. Regulatory objectives: Meet legal requirements, clearly stated scope of practice, qualified to represent themselves as licensed therapist.
- Employers: Licensees who are more prepared require less on the job training and reduce liability. Well-rounded and well-educated therapists can bring more value to an employer and may have increased longevity in the field. Regulatory objectives: Employees meet all legal requirements, they have a clear stated scope of practice, assists employer in protecting clients/patients from potential harm.

Below is a summary of education hours required to meet regulatory objectives:

- The Entry Level Analysis Project, (The Entry-Level Analysis Project (ELAP) is a research project initiated by the Coalition of National Massage Therapy Organizations in March 2012. The project goals were to define knowledge and skill components of entry-level education and recommend the minimum number of hours schools should teach to prepare graduates for safe and competent practice in the massage profession. Completed in December of 2013) a 527-page, report identifies the CORE competencies required for the field of massage therapy. This number of education hours is 625.
- Per attached handout number 1 (excel spreadsheet) none of the current curriculums of the largest massage educators in the state of Arizona can teach the core competencies within a 500-hour limit. This clearly indicates to the task force that the professional and consumer demands have evolved over the past fifteen years.
- When comparing the actual cost in dollars of each course hour from 500 to 625, the costs do NOT outweigh the benefits in preparedness to enter the field and without the core competencies the student/licensee runs the risk having paid high tuition, possible indebtedness and a lack of employment opportunities or longevity in the field. For all hours from 625 to 700 (75) it would be up to the student to determine the cost/benefit based on individual desire for employment choices, tuition cost, well roundedness and so on.

Conclusion:

The least burdensome with highest benefit value as an entry point in hours cannot be lower than 625. Therefore, the actual financial burden of the additional 75-hour requirement is negligible but the cost/burden to the student/licensee and consumer of NOT having those hours could be high depending on which course hours were not available at their chosen school; for example, reduced or no ethics training or reduced/removed hands-on clinical practice time.

Curriculum breakdown by school	Course Name	Course Clock Hrs	Avg Cost per clock hr	Course Cost (not including books, living exp etc)	Prime benefit of Course - Public Safety	Second benefit Student employability	Third benefit Employer Perspective	Potential Dollars "Saved" if cut or reduced	Consequences of course elimination
<b>ELAP Study Report 2012/2013 - See link below to 527 page report of findings</b>  <a href="http://www.elapmassage.org/files/ELAP_Blueprint.pdf">http://www.elapmassage.org/files/ELAP_Blueprint.pdf</a>	<b>The Core: Entry-Level Massage Education Blueprint - 527 page document result of study completed 2013</b>								
	<b>Massage Theory and Principles:</b> Includes but not limited to: Benefits and effects of massage, research, indications/contraindications CPR/first aid training	27	N/A	N/A	improves client care and reduces risk of working on contra-indicated health issues.	Student has an introduction to industry and how to prevent injury and handle emergency situations	More well informed employee	N/A	N/A
	<b>Massage Professional Practices:</b> Includes but not limited to: disease transmission prevention/ hygiene/prevention of work related injuries /understanding laws	20	N/A	N/A	disease transmission prevention	prevention of work related injuries /understanding laws	prevention of work related injuries /understanding laws	N/A	N/A
	<b>The Therapeutic Relationship:</b> Includes but not limited to: Ethics, boundaries professional/emotional/sexual,preventing transference/ counter-transference,	40	N/A	N/A				N/A	N/A
	<b>Anatomy, Physiology and Pathology:</b> Includes but not limited to: Understanding of medications, contraindications, adaptive techniques for endangerment areas or client feedback/understanding of all body systems	80	N/A	N/A	Understanding of medications, contraindications, adaptive techniques for endangerment areas or client feedback/understanding of all body systems			N/A	N/A
	<b>Assessment and Documentation:</b> Includes but not limited to: Health forms, clinical assessments: Pain, postural, functional movement, appropriate client interviewing	50	N/A	N/A				N/A	N/A
	<b>Massage and Bodywork Application:</b> Includes but not limited to: Appropriate application of massage techniques	175	N/A	N/A				N/A	N/A
	<b>Palpation and Movement:</b> Includes but not limited to: Palpation of muscles, muscle actions, tendons, bony landmarks,	71	N/A	N/A				N/A	N/A
	<b>Adapting Sessions for Clients:</b> Includes but not limited to:	80	N/A	N/A				N/A	N/A
	<b>Career Development:</b> Includes but not limited to: 50 hours of which are student clinical practice hours	82	N/A	N/A				N/A	N/A
<b>Total minimum hours required for a CORE program per study results.</b>	<b>82</b>	<b>N/A</b>	<b>N/A</b>				<b>N/A</b>	<b>N/A</b>	
<b>Pima Community College uses NCBTMB course hours breakdown</b>	Massage and Bodywork Assessment, Theory and Application Instruction	386	7.36	2840.96	Student has rudimentary understanding of very basic/general massage skills and proper documentation standards, health forms, soap charting which improves client care and reduces risk of working on contra-indicated health issues.	Clinical hands on practice, Proper documentation standards, health forms, soap charting, reducing risks/liability of working on contra-indicated health issues.	Basic requirement to hire licensed employees, improved client care, reduced risk/liability of employees hurting clients by working on contra-indicated health issues.	\$2,840.96	N/A
	Instruction on Body Systems (Anatomy, Physiology, and Kinesiology):	133	7.36	978.88	Student has basic understanding of human anatomy and how body systems.	Basic required course toward licensure	same as above	\$978.88	N/A
	Introduction to Pathology for Massage and Bodywork	40	7.36	294.4	Solid understanding of disease transmissions and applicable protective measures to avoid spread of communicable diseases. Reduces risks of working on contra-indicated health issues.	Eligible to be employed in a wide range of environments, including hospitals. A great er understanding of how to protect themselves and others from communicable diseases. Reduces risk of liability exposure for working on contra-indicated health issues.	Reduced need for on the job training, improved client care, reduced risk/liability of employees hurting clients by working on contra-indicated health issues.	\$294.40	Increased likelihood of disease transmission, less employment opprtunities possible,potential increased burden on employers for more on the job training and risk of client harm.
	Business Management for Massage and Bodywork	26	7.36	191.36	Enhanced knowledge of consideration of clients rights (HIPPA, Local regulations, etc).	Improved career success from understanding different business models and knowing which type of model to apply for or choose self-employed option.	Reduced need for on the job training, better understanding of local regulations. Employee or potential employee may be making a more informed employment application choice leading which can reduce turn over.	\$191.36	Increased likelihood of student running afoul of rules and regulations, frequent dissatisfaction with working environment. General lack of success and potentially leaving the industry.

Curriculum breakdown by school	Course Name	Course Clock Hrs	Avg Cost per clock hr	Course Cost (not including books, living exp etc)	Prime benefit of Course - Public Safety	Second benefit Student employability	Third benefit Employer Perspective	Potential Dollars "Saved" if cut or reduced	Consequences of course elimination
	Professionalism and Ethics for Massage Therapy	26	7.36	191.36	Solid understanding of client care from an emotional and ethical viewpoint. Understanding scope of practice and when and how to refer to other professionals.	Properly prepared for situations that require careful ethical consideration. Reduce liability/ or potential complaints due to accidental ignorance.	Reduced need for on the job training, better understanding situations that may lead to reprimands up to and including loss of license	\$191.36	Increased likelihood of student running afoul of rules and regulations
	Introduction to Massage Therapy	26	7.36	191.36	Comprehensive overview of aspects of client centered care	Initial preparation for key concepts related to a career in Massage Therapy	Student will have an initial understanding of industry and employer requirements	\$191.36	Some students may enter employment only to quickly leave the profession, wasting not only their time and money but an employer's time and money as well.
	Introduction to Complementary and Alternative Medicine	40	7.36	294.4	Students will be trained to discern legitimate and illegitimate health practices, and will be a knowledgeable resource for their clients. Will have a better understanding who to refer clients to when the need arises.	Students will have the chance to explore various related modalities and decide which one may interest them.	Preliminary preparation to work in a wide range of environments including, spa, wellness clinic, Chiropractic, etc.	\$294.40	Students will be less prepared for a myriad of employment opportunities.
	Self-care for Personal Wellness	26	7.36	191.36	Students will explore a variety of self-care practices, and will be a knowledgeable resource for their clients	Students will learn strategies for maintaining their health, and protecting a long career in the field	Reduced need for on the job training, reduced likelihood of on the job injuries	\$191.36	Increased likelihood of career ending injuries
	Internship	48	7.36	353.28	Students will learn firsthand about the policies and procedure for ensuring client safety in an established professional setting. Feedback from professionals helps the student to understanding where they could be doing harm or accidental inappropriate actions.	Most of all students received offers for employment during their Internships. Additional hands-on practice time with professional feedback to improve skills, client satisfaction and retention leading to sustainable employment / income.	Employers are able to observe the student for a considerable length of time, and allow for a more informed decision to offer them employment.	\$353.28	Students would need to rely on previous job experience, on the job learning, potential injury to clients and/or may be less employable at graduation.
	<b>Total</b>	<b>751</b>		<b>5527.36</b>				<b>\$5,527.36</b>	

AZ College	Massage Theory & Technique Classes	Course Clock Hrs	Avg Cost per clock hr	Course Cost (not including books, living exp etc)	Prime benefit of Course - Public Safety	Second benefit Student employability	Third benefit Employer Perspective	Potential Dollars "Saved" if cut or reduced	Consequences of course elimination
	MTM 125 Massage for Special Populations 40 -	40	18.2	\$728.00	Understand indications and contra-indications	Wider array of potential clients	Wider array of potential clients	\$728.00	May need to take CE classes at higher cost/hour
	MTM 155 Swedish Massage 40	40	18.2	\$728.00	Basis knowledge needed to practice	Basic massage needed to practice		\$728.00	N/A
	MTM 185 Eastern & Energetic Approaches 40 -	40	18.2	\$728.00		If sitting for board certification test they will be prepared for the questions relating to these approaches. Make student more well rounded. May potentially improve client outcomes.	More well rounded employee, potential higher client satisfaction rate from more comprehensive sessions	\$728.00	Potential higher failure rate of NCBTMB test, cost of initial test, cost of retake.
	MTM 195 Client Care in Massage Therapy 40 -	40	18.2	\$728.00				\$728.00	
	MTM 200 Clinical Practicum 30	30	18.2	\$546.00	Clients won't be paying poorly prepared licensees to practice on them.			\$546.00	
	MTM 300 Advanced Clinical Practicum 100 -	100	18.2	\$1,820.00	Clients won't be paying poorly prepared licensees to practice on them.	Improved client satisfaction	Improved client satisfaction	\$1,820.00	
	MTM 210 Spa Techniques 40 -	40	18.2	\$728.00		More access to employment in spa industry		\$728.00	
	MTM 215 Sports & Injury Massage 40 -	40	18.2	\$728.00		Ability to work on athletes and injuries with at least student experience.		\$728.00	
	MTM 230 Muscular System: Spine & Thorax 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	N/A

Curriculum breakdown by school	Course Name	Course Clock Hrs	Avg Cost per clock hr	Course Cost (not including books, living exp etc)	Prime benefit of Course - Public Safety	Second benefit Student employability	Third benefit Employer Perspective	Potential Dollars "Saved" if cut or reduced	Consequences of course elimination
	MTM 240 Spine & Thorax Palpations 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTM 250 Pain Solutions in Massage Therapy 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTM 260 Muscular System: Lower Body 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTM 270 Lower Body Palpations 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTM 280 Muscular System: Upper Body 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTM 290 Upper Body Palpations 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTA 105 Anatomy & Physiology 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTA 130 Circulation & Body Defense 40 -	40	18.2	\$728.00	Basis knowledge needed to practice			\$728.00	
	MTA 135 Bodily Communication & Control 40 -	40	18.2	\$728.00				\$728.00	
	MTA 150 Business & Communication 40 -	40	18.2	\$728.00	Ethics			\$728.00	
	MTA 160 Metabolic Processes, Elimination & Reproduction 40 -	40	18.2	\$728.00				\$728.00	
	<b>Total</b>	<b>850</b>	<b>18.2</b>	<b>\$15,474.00</b>					
<b>SWIHA/Cortiva</b>									
	MT 115 Anatomy 60 4.00	60	18	\$1,080.00	Basis knowledge needed to practice			\$1,080.00	
<b>Same curriculum</b>	BC 110 SOAP Notes 6 0.25	6	18	\$108.00	Basis knowledge needed to practice			\$108.00	
<b>Different tuition costs</b>	MT 500 Physiology 60 4.00	60	18	\$1,080.00	Basis knowledge needed to practice			\$1,080.00	
<b>SWIHA 18./clock hour</b>	MT 151 Kinesiology - Anatomical Applications 36 2.25	36	18	\$648.00				\$648.00	
<b>Cortiva 16.5/clock hour</b>		8	18	\$144.00	Basis knowledge needed to practice			\$144.00	
	BC 301 Ethics for Massage Therapists 8 0.50	8	18	\$144.00	Basis knowledge needed to practice			\$144.00	
	BC 302 Business Practices for Massage Therapists 12 0.75 CC 100	12	18	\$216.00				\$216.00	
	MT 521 First Aid 8 0.25	8	18	\$144.00				\$144.00	
	MT 530 CPR Certification 4 0.25 MT 115	4	18	\$72.00				\$72.00	
		40	18	\$720.00	Basis knowledge needed to practice			\$720.00	
	SC 415 Pathology - BW 40 2.50								
	CC 100 Communication Skills for Practitioners I 15 1.00	15	18	\$270.00				\$270.00	
	CC 101 Communication Skills for Practitioners II 15 1.00	15	18	\$270.00				\$270.00	
	BC 430 Practice Development Portfolio 15 1.00	15	18	\$270.00				\$270.00	
	<b>MESSAGE CORE COURSES SUBTOTAL 279</b>	<b>279</b>	<b>18</b>	<b>\$5,022.00</b>					
		40	18	\$720.00	Basis knowledge needed to practice			\$720.00	
	MT 200 Swedish Massage 40 1.25								
	PC 850 Cranial Unwinding I 20 1.00	20	18	\$360.00				\$360.00	
	MT 400 Myotherapy - 7 Step Release System 40 1.25 MT 200 or Licensed	40	18	\$720.00				\$720.00	
	TE 220 Deep Tissue Sculpting 24 0.75 MT 200 or Licensed	24	18	\$432.00				\$432.00	
	CB 400 Mother Touch 8 0.25	8	18	\$144.00				\$144.00	
	RF 201 Reflexology - A Western Approach for Body Workers 20 0.75	20	18	\$360.00				\$360.00	
	MT 975 Massage Clinic – Supervised MT 750 75 1.50 MT 200 or Licensed	75	18	\$1,350.00				\$1,350.00	
	EV 003 Massage Clinic Orientation - -			\$0.00				\$0.00	
	<b>MESSAGE HANDS-ON CORE COURSES SUBTOTAL 227</b>	<b>227</b>	<b>18</b>	<b>\$4,086.00</b>					
	AR 100 Aromatherapy - Intro 20 1.25	20	18	\$360.00				\$360.00	
	EC 146* SpaLomi Massage* 24 0.75	24	18	\$432.00				\$432.00	
	EC 700 Reiki I - Traditional 16 0.50	16	18	\$288.00				\$288.00	
	TE 340 Lymphatic Massage 16 0.50	16	18	\$288.00				\$288.00	
	TE 320 Lower Back Pain Release 8 0.25	8	18	\$144.00				\$144.00	
	TE 600 Rock & Unlock 12 0.25	12	18	\$216.00				\$216.00	
	TE 650 Sports Massage - Intro 8 0.25	8	18	\$144.00				\$144.00	
	EL 128 Myofascial Energetic Massage: Adv. Tissue Talk 16 0.50	16	18	\$288.00				\$288.00	
	TE 143 Breast Health I 4 0.25	4	18	\$72.00				\$72.00	
	TE 144 Breast Health II 4 0.25	4	18	\$72.00				\$72.00	
	TE 402 Medical Massage for Cancer Survivors 16 0.75	16	18	\$288.00				\$288.00	
	EL 720 Thumbless Therapy 8 0.25	8	18	\$144.00				\$144.00	
	TE 225 Rotator Cuff/Shoulder Joint 8 0.25	8	18	\$144.00				\$144.00	

Curriculum breakdown by school	Course Name	Course Clock Hrs	Avg Cost per clock hr	Course Cost (not including books, living exp etc)	Prime benefit of Course - Public Safety	Second benefit Student employability	Third benefit Employer Perspective	Potential Dollars "Saved" if cut or reduced	Consequences of course elimination
	TE 662 Hydrotherapy / Injury Management 20 0.75	20	18	\$360.00				\$360.00	
	TE 380 Neck Release 8 0.25	8	18	\$144.00				\$144.00	
	TE 160 Carpal Tunnel/Thoracic Outlet Release 8 0.25	8	18	\$144.00				\$144.00	
	TE 690 Trigger Point 16 0.50	16	18	\$288.00				\$288.00	
	TE 260 Fibromyalgia Therapy 16 0.50	16	18	\$288.00				\$288.00	
	TE 302 Elder Touch - Medical 16 0.50	16	18	\$288.00				\$288.00	
	<b>Massage Classes subtotal 244</b>	<b>244</b>	<b>18</b>	<b>\$4,392.00</b>					
	<b>Total</b>	<b>750</b>	<b>18</b>	<b>\$13,500.00</b>					

## TOEFL iBT® Test Fees

Details on our fees and payment policies:

Item	Fees
Registration	<a href="#">Fees vary by country.</a>
Late registration	US\$40
Rescheduling	US\$60
Reinstatement of canceled scores	US\$20
Additional score reports (per institution or agency)	US\$20 each
Speaking or Writing Section score review	US\$80
Speaking and Writing Section score review	US\$160
Returned payment	US\$20

USA

\$200.00 estimated

Support document #2 – GRRC Cost/Benefit analysis Massage Education Hours

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4145003/> Link to study NIH PMC study

<https://www.ijtmb.org/index.php/ijtmb/article/view/248/297> Link to PDF

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# Choose Wisely: the Quality of Massage Education in the United States

Martha Brown Menard, PhD, LMT

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This article has been [cited by](#) other articles in PMC.

[Int J Ther Massage Bodywork](#). 2014 Sep; 7(3): 7–24.  
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PMID: [25184011](#)

## INTRODUCTION

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Assessing the quality of post-secondary education remains a difficult task<sup>①</sup>, despite many efforts to do so. Often, quality is in the eye of the beholder or only conspicuous by its absence. Much has been written over the past twenty years, and no consensus or standard definition of educational quality has yet been agreed upon or developed, including quality in career and technical or vocational education<sup>②,③,④</sup>.

Dew<sup>⑤</sup> points out that much of the confusion in defining educational quality stems from the simultaneous use of very different frameworks to describe it. These are quality as endurance, quality as luxury or prestige, quality as conformity to requirements, quality as continuous process improvement, and quality as value added—we expect that those completing any educational program to have gained demonstrable skills or knowledge as a result. The most relevant frameworks for evaluating the quality of massage education from an accreditation perspective are: endurance, as it applies directly to the financial stability of an institution; conformity to requirements, as it applies to meeting accepted educational standards; value added, which can be evaluated by metrics such as graduation rates, employer placement rates, and pass rates on licensing examinations; and process improvement, as reflected in the institutional self-study. The self-study process typically combines and documents elements of all these frameworks.

## RESULTS

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### Summary of Schools Data

Of the 487 schools from which publicly available data were obtained, 386 programs reported tuition costs, with program lengths varying from six months up to two years. Whenever a school offered multiple massage programs of varying lengths, costs were averaged. In most cases, tuition cost was taken from the Gainful Employment disclosures. However, occasionally it was not reported there, so COMTA staff gathered it from other places on the school’s website or catalog. Staff attempted to maintain consistency on how the tuition cost was calculated, but consistency was not always possible. For example, some schools include licensure fees, books, and supplies added to the direct tuition costs, where others do not, and these details were often not specified. For this reason, cost should be considered an approximate number. A comparison of average costs by type of institution is shown in [Table 1](#).

**Table 1**

Average Tuition Cost and Educational Outcomes by Type of Program

	<i>Corporate Programs</i>	<i>All Other For-Profit Programs</i>	<i>Community College Programs</i>	<i>University Programs</i>
<i>Tuition costs</i>	\$16,561.77	\$13,505.24	\$5,647.05	\$10,768.40
<i>Graduation rate</i>	70.38%	73.24%	66.32%	74.44%
<i>Placement rate</i>	74.50%	77.97%	87.04%	74.59%
<i>Median loan amount</i>	\$9,998.85	\$8,228.05	\$2,004.06	\$9,871.75
<i>Repayment rate</i>	41.31%	46.70%	not available	83.45%

With these caveats in mind, the average tuition cost across all schools/programs was \$13,605. Costs varied widely, ranging from \$2,392 for a certificate that could be completed in six months, to as much as \$46,845 for a two-year associate’s degree at a private institution. Longer programs at for-profit and corporate schools generally had higher tuition costs, averaging \$13,505 and

\$16,562, respectively. Of these, the longest programs tended to be community college programs leading to associate degrees over three to four semesters and with a much lower average cost of \$5,647. Certificate programs offered through CAM universities had an average cost of \$10,768.

Outcomes, including graduation rates and placement rates, are also allowed to be calculated using more than one method. Standards for reporting ‘ontime’ graduation rates for the USDE were changed during the time this evaluation was conducted, and do not always consider the total number of students who started a program and graduated within the same cohort, a measure that many consider to be more closely related to educational quality. The same variation in calculation methods also applies to job placement rates; some schools use their pass rates on licensing examinations in lieu of actual job placement. Massage programs in public institutions presented the most difficulty in finding the required outcomes data. These programs do not have to consistently follow the Gainful Employment requirements and often have additional state regulations to follow. Often only rates were provided for the institution as a whole or for the three largest programs (which generally do not include massage). Rates are listed when they could be found, but there are numerous omissions. All outcomes were averaged by type of school, and these results are also presented in [Table 1](#).

Average reported graduation rate across all programs was 71.9% and reported job placement rate was 95.6%. These numbers are very likely to be overestimates, especially when examined in light of the financial aid data. Of the schools and programs that reported student loan data, 84% of students at those institutions received federal financial aid. The median loan amount was \$8,052. The average percentage of all massage therapy program students included in this analysis who repay their loans is only 43.4%.

Average tuition costs and educational outcomes for each accreditation organization are listed in [Table 2](#). COMTA-accredited schools and programs show an average tuition cost that is below the reported national average and below that reported for for-profit schools, and have the highest repayment rate among all accreditation organizations. Most massage therapy accreditation organizations accredit institutions; COMTA is the only one of these that offers programmatic accreditation specific to massage therapy. NACCAS, which primarily accredits schools offering training in cosmetology, skin care, massage, and related subjects, is a close second in terms of repayment rates, and has the lowest average tuition cost.

**Table 2**

Average Tuition Cost and Outcomes by Accreditation Organization

	<i>ABHES</i>	<i>ACCSC</i>	<i>NACCAS</i>	<i>ACICS</i>	<i>COE</i>	<i>ACCET</i>	<i>COMTA</i>
<i>Average tuition cost</i>	\$13,115.13	\$14,102.81	\$9,253.98	\$18,581.28	\$11,224.13	\$14,908.56	\$12,592.36

<i>Average graduation rate</i>	75.00%	75.72%	88.00%	60.00%	84.00%	76.00%	88.00%
<i>Average placement rate</i>	80.00%	74.65%	77.00%	76.00%	88.00%	92.00%	82.00%
<i>Median loan amount</i>	\$7,180.00	\$7,847.14	\$4,101.11	\$11,532.50	\$4,989.00	\$7,812.25	\$7,969.11
<i>Average repayment rate</i>	41.60%	47.65%	59.00%	37.00%	45.73%	51.00%	61.00%

**Table 4**

Massage Educators’ Opinions on Necessary Competencies for Massage Therapists in Different Roles

<b>Necessary Competencies for a Massage Therapist To Have:</b>	<b>As a Colleague Working in a Clinical Setting</b>	<b>As One’s Own Personal Therapist</b>
Professional appearance and demeanor	98.6%	93.7%
Good oral and written communication skills	96.7%	90.6%
Interprofessional collaboration or ability to work as part of a team	90.6%	62.5%

Patient intake interviewing skills	93.9%	87%
Therapeutic relationship skills	93.9%	89.9%
Ability to develop a treatment plan	90.1%	80.2%
Proficiency in applying therapeutic techniques to benefit the patient	96.7%	94.4%
Clinical judgment—ability to modify treatment to the individual patient	96.2%	93%
Ability to assess treatment outcomes	86.6%	79.8%
Research literacy—ability to find and critically evaluate relevant health care research	48.1%	38.9%
Familiarity with electronic medical records or charting	24.8%	15.3%
Advanced or specialized training in pre/peri-natal massage	19.8%	7.9%
Advanced or specialized training in geriatric massage	17.9%	7.6%

Advanced or specialized training in oncology massage	15.6%	6.1%
Advanced or specialized training in orthopedic or rehabilitation massage	43.4%	47.4%
Advanced or specialized training in other medically-oriented massage	36.8%	38.4%
Other competency or advanced training (please describe)	22.9%	23.8%

**F**

CONSIDERATION AND DISCUSSION OF 180 DAY EXTENSION REQUEST FOR ONE YEAR  
REVIEW REPORT FROM DEPARTMENT OF AGRICULTURE



# Arizona Department of Agriculture

Plant Services Division  
1688 W. Adams Street, Phoenix, Arizona 85007  
P: (602) 542-0994 F: (602) 542-1004

March 26, 2020

Ms. Nicole Sornsin  
Chairwoman  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, Arizona 85007

Dear Chairwoman Sornsin:

Thank you for your letter alerting the Arizona Department of Agriculture (the "Department") of our requirement to submit by May 31, 2020, a one-year review report for the Industrial Hemp rules under Title 3, Chapter 4, Article 10 of the Arizona Administrative Code.

The Arizona industrial hemp program is adopted pursuant to, and in conformance with, the Agricultural Improvement Act of 2018 (PL 115-334, December 20, 2018, 132 Stat 4490). The United States Department of Agriculture ("USDA") has oversight over state hemp programs, which can be submitted for approval to the USDA. The USDA has adopted an interim rule to guide state programs, but the rule has not been finalized. It is difficult to predict how quickly the USDA will finalize its rule, and how the final rule will impact the Arizona industrial hemp program.

The Arizona industrial hemp program has been submitted for approval to the USDA, and that approval is still pending. The USDA preliminarily asked for changes or explanations regarding the Arizona rules, but the Department does not know if those changes or explanations will be finally accepted. Doubtless, the ability of both the Department and the USDA to address these issues will be impacted by the current COVID-19 state of emergency.

For these reasons, the Department is seeking a 180-day extension to be able to effectively work through the USDA process and then file its one-year review report.

Respectfully,

A handwritten signature in blue ink, appearing to read "Mark Killian", is written over the word "Respectfully,".

Mark Killian  
Director  
Arizona Department of Agriculture